



TO: ATTORNEY GENERAL OF ONTARIO
SOLICITOR GENERAL OF ONTARIO

RESPONSE BY THE OFFICE OF THE PUBLIC COMPLAINTS COMMISSIONER TO
REQUESTS BY THE CHIEF OF POLICE OF METROPOLITAN TORONTO AND THE
METROPOLITAN TORONTO POLICE ASSOCIATION FOR LEGISLATIVE
AMENDMENTS TO THE METROPOLITAN TORONTO POLICE FORCE COMPLAINTS
ACT, 1984

FEBRUARY 1988



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SOLICITOR GENERAL OF ONTARIO

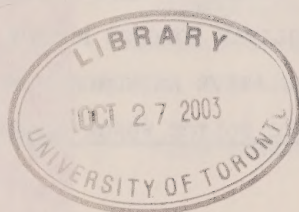
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RESPONSE BY

THE OFFICE OF THE PUBLIC COMPLAINTS COMMISSIONER
TO REQUESTS BY

THE CHIEF OF POLICE OF METROPOLITAN TORONTO
AND THE METROPOLITAN TORONTO POLICE ASSOCIATION


FOR LEGISLATIVE AMENDMENTS TO THE
METROPOLITAN TORONTO POLICE FORCE COMPLAINTS ACT, 1984

FEBRUARY 1988



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PROLOGUE

The Metropolitan Toronto Police Force Complaints Act, 1984 is a statute enacted after wide-ranging consultation with the Metropolitan Toronto Police Association, police management, and a great many community groups. If amendments to this legislation initiated by the Police Association and police management are to be given serious consideration, it is respectfully submitted that opportunity be given to community groups to make representations on these recommendations and to make recommendations of their own. Included in this Brief are letters from some community groups which have requested the opportunity to make such submissions.

Police power: keeping it under control

BY ROBERT MARTIN

Mr. Martin teaches law at the University of Western Ontario.

LONDON, Ont.

MING CHARLES I lost his head for being stubborn and a bit dimwitted. There was also a principle involved. Charles believed that as king he shouldn't have to obey the law. He was wrong.

The principle was established that the state and all its officials are subject to the law. This is the principle that after-dinner speakers like to refer to as the Rule of Law — capital R, capital L. It is fundamental to our constitution.

Reality being what it is, things do not always work the way they are supposed to. Examples of official lawlessness abound in our history. In 1959, the Supreme Court of Canada had to teach Quebec Premier Maurice Duplessis a lesson in constitutional propriety. Duplessis had an unfortunate habit of imagining he was above the law and the court chastised and fined him for abuse of power in revoking a Montreal restaurant owner's liquor licence.

It is especially important that the police obey the law. Uncontrolled police power is a hallmark of repressive states. Canada's record is not spotless.

Throughout the 1970s, and much of the 1960s too, the Royal Canadian Mounted Po-

lice were engaged in systematic and widespread lawbreaking aimed primarily at political movements and individuals they regarded as subversive. This disregard for the law reached such a scale that the government of Pierre Trudeau was forced to set up a royal commission to look into it. Mr. Justice David McDonald of the Alberta Court of Queen's Bench was chairman. While sidestepping certain delicate issues, he did affirm that the police should act according to the law and made specific recommendations about the RCMP.

The general concern with police behavior has not gone away. Nor, in a democracy, can it.

Police officers are given vast power over their fellow citizens. They are authorized to run around in public carrying guns. They belong to disciplined organizations that have at their disposal equipment, information and technology. Cops are human. Like other humans, they are capable of misusing power. Like all of us, they can become violent and they can be dishonest.

We have police for a reason. They are, or are supposed to be, there to serve us, to further our collective interests. If the police exist to carry out the popular will, then they must be accountable to the people. They must be subject to democratic control.

All this is, one hopes, axiomatic. It is also abstract. The important question is how, in

concrete terms, are citizens to exercise control over their police?

One obvious means is through the courts. Our judges have the general responsibility of ensuring state officials act within the law. Why shouldn't they also have the job of supervising the police?

It's a good question. Unfortunately, it's also idle speculation. Our courts have not been willing in the past to control the police, nor are they likely to be so in the future.

For decades the courts, particularly the Supreme Court of Canada, were willing to give the police what amounted to a blank cheque. In 1980, one judge observed that the police should not be "hindered in their work." The Canadian Charter of Rights and Freedoms has not led to significant change. The Charter, the judges have said, will not be used to discipline the police.

Our legislatures might be a means of control. The federal Solicitor-General is responsible to Parliament for the activities of the RCMP, as are the appropriate provincial ministers answerable to their legislatures. But again, the opportunities for control have been more theoretical than real. Parliament was not able to curtail any of the unlawful acts of the RCMP that led to the creation of the McDonald Commission. In any case, the important police activity in Canada goes on at the municipal and regional level. What goes on is far too parochial to attract the attention of even a provincial legislature.

At the municipal level, the traditional forum for dealing with the police is the Police Commission. These committees of local worthies have tended to view themselves as defenders of the honor of their police. They have seldom sought to exercise control.

So what was to be done? Under ordinary circumstances, nothing. The police act with-

in the law most of the time. We could hope that misconduct would never be noticed or, if it were, nobody would care too much.

This comforting approach might have continued indefinitely even in Toronto. But at the beginning of the decade, an unarmed man was shot in his home by a police officer. The man died. That he was black added to the resultant public controversy.

In 1981, in response to this and other incidents, the Ontario Legislature established an Independent Police Complaints Board for Toronto. Citizens may bring grievances to this body.

It is empowered to hold public hearings into allegations of police misconduct. The police officer whose actions are under review has all the rights of an accused person in a criminal trial. In particular, the board may not find that a police officer has been guilty of misconduct unless this has been proved beyond a reasonable doubt.

The creation of the board was a practical approach to the control of police behavior in a democracy. The board has not conducted witch-hunts. It has, by almost all accounts, acted sensibly and responsibly.

The Metropolitan Toronto Police, if we are to believe their chief and their union, do not like the board. They are wrong. Their hostility toward the public complaints system suggests a failure to understand the role of the police in a democracy. Their continued opposition to a lawfully constituted public institution is, to say the least, disturbing. Controlling the police is not going to get easier.

A good place to start would be to ensure that every Metro cop understands the fundamental obligation to act within the law. Those who have trouble understanding or accepting this obligation might be reminded of the fate of Charles I.

INTRODUCTION

PUBLIC COMPLAINTS AGAINST POLICE IN METROPOLITAN TORONTO--

THE HISTORY AND OPERATION OF THE

OFFICE OF THE PUBLIC COMPLAINTS COMMISSIONER

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OFFICE OF THE PUBLIC COMPLAINTS COMMISSIONER

The Attorney General of Ontario has tabled in the Legislature a Bill to permit the expansion throughout Ontario of the first system of independent civilian review of police complaints in the province. The proposed legislation will permit other municipalities in Ontario to "opt in", on a voluntary basis, to a system which for some six years has been limited to Metropolitan Toronto.

Since 1981 the members of the Metropolitan Toronto Police Force have benefitted from an employment disciplinary system which differs from that set out in the Police Act. The innovative Toronto police disciplinary scheme operated initially as a pilot project under the Metropolitan Police Force Complaints Project Act, 1981, and operates currently under the Metropolitan Toronto Police Force Complaints Act, 1984.

The Metropolitan Toronto Police Force performs a vital public service. The degree of respect accorded the force by most citizens is a testament to the importance of its function and the quality of service of its individual officers. However, as our democratic institutions have matured, it has become increasingly apparent that no individual or organization performing important public services can maintain widespread respect and support without public accountability. The more significant and public the function, the more insistent is community need and demand for accountability to balance the responsibility and trust granted to the individual or organization. **The purpose of the legislation is to provide for such accountability and to ensure that an individual who has a complaint about the conduct of an officer of the Metropolitan Toronto Police Force will receive fair treatment in its disposition, while preserving appropriate protection for subject officers.**

The 1981 legislation created the Office of the Public Complaints Commissioner, an agency independent of the police force and staffed and directed by civilians. The successor legislation, the Metropolitan Toronto Police Force Complaints Act, 1984, continues the system with only minor "housekeeping" changes. Under the Act, the Public

Complaints Commissioner has the obligation to monitor the police investigation of all citizens' complaints and to review the decision of the police with respect to a complaint at the request of a dissatisfied complainant. The Commissioner has the power to make recommendations as to changes in police practices and procedures, or law affecting the resolution or prevention of public complaints. At the conclusion of a review, the Commissioner may order a hearing by a civilian Board of Inquiry if he believes that, in the public interest, such a hearing is required, or may decide to take no further action.

I. A BRIEF HISTORY OF THE LEGISLATION

The legislative history of the police complaints system in Metropolitan Toronto reflects the complexity of the issues and the diverse interests at stake. While citizen complaints about police have always been a part of the justice system, they began to be seen as a matter of broad community concern in Ontario in the 1970s. It was predictably within Metropolitan Toronto, an aggregate of several cities with a population of 2.5 million and a police force of 5,000 officers, that public debate was the most frequent and wide-ranging. The critical focus was the

perceived nature of the complaint process as a closed, secretive system. Concerns centred on the lack of documentation regarding complaints, and on the lack of information available to the complainant or the public about the investigation and any disciplinary action taken as a result of the complaint. Increasingly, there was a public belief that the police attitude toward citizen complaints was overprotective.

In 1974, after a series of highly-publicized complaints involving the actions and activities of officers of the Metropolitan Toronto Police Force, the late Arthur Maloney was appointed by Metropolitan Toronto to study police complaints procedures. Among other initiatives he recommended the appointment of an independent civilian commissioner of complaints.

Public and media concerns continued unabated, and in 1976 the Ontario government appointed Mr. Justice Donald Morand to conduct a Royal Commission Inquiry into Metropolitan Toronto Police Practices. His report also recommended that the province establish an independent civilian review agency.

In 1977, leaders of governmental and visible minority organizations became increasingly concerned about policing and race relations. The Council of the Corporation of Metropolitan Toronto appointed Walter Pitman to conduct a study of race relations. He perceived a continuing erosion of the confidence of visible minority communities in established authority. His report recommended that the province implement the recommendations contained in the Morand report as soon as possible.

In June, 1979, Roy McMurtry, who at that time was both Attorney General and Solicitor General of Ontario, appointed Sidney Linden to study possible methods of injecting a civilian component into the handling of police complaints. The study was wide-ranging and included an assessment of police complaint procedures in many other jurisdictions.

During 1979, while that research was continuing, Gerald Emmett Cardinal Carter, of Toronto was asked by Metropolitan Toronto Council to assist in easing growing tension in police/visible minority relations. His report to Council in October of 1979 recommended that a civilian component be introduced into the police complaints procedure. He also noted, with approval, many of the suggestions in the Maloney and Morand reports.

Events in Ontario between 1978 and 1981 clearly demonstrated a clash between the views of the police and a large number of community groups, many of whom were dissatisfied with the existing system of handling complaints. Equally clearly, there was discontent among police officers with their own internal complaints system. In Metropolitan Toronto, the Police Association made statements to the media to the effect that the internal Police Act trials were a "Kangaroo Court".*

The Linden model for importing civilian participation into the police complaints process recommended initial investigation of complaints by the police, subject to the monitoring by a civilian review agency which could, in certain exceptional circumstances, conduct initial investigation. The model required the civilian agency to review the police investigation and disposition of the complaint when requested. It further provided for the creation of a civilian adjudicative body which could impose discipline directly.

The then Attorney General/Solicitor General and the Mayors of the municipalities comprising Metropolitan Toronto decided that legislation was necessary to establish an

*Emphasis Added

independent review of public complaints against the Metropolitan Toronto Police Force. In 1980, Metropolitan Toronto Council asked the province to endorse the concept of a Public Complaints Commissioner and to appoint such a person immediately. In 1981, Sidney Linden was appointed as Public Complaints Commissioner with a mandate to receive complaints on an informal basis prior to the enactment of legislation. The appointment was made with the cooperation of the Metropolitan Toronto Board of Commissioners of Police, the Police Force, and the Police Association.

On December 20, 1981, the Metropolitan Police Force Complaints Project Act, 1981, established the Office of the Public Complaints Commissioner as a three-year pilot project. The basic scheme of the Act provided that the Office would:

- (1) monitor the handling of complaints by the police;
 - (2) perform initial investigation in unusual circumstances;
 - (3) when the Commissioner believed that the public interest required a hearing, refer cases to a civilian adjudicative tribunal with direct disciplinary power;
- and

(4) perform a preventative function, making recommendations to the Chief of Police, the Board of Commissioners of Police, the Attorney General and Solicitor General, with respect to policing issues arising out of complaints.

The project nature of the legislation was an acknowledgement that new ground was being broken and that trial and experimentation were to be the order of the day.

In 1984, the present legislation, embodying basically the same system with some "housekeeping" amendments, was passed to establish the system on a permanent basis. At that time the concerns and requests of police management and the Police Association were accommodated by those amendments. The Legislature is currently considering the expansion of the system to other interested municipalities in Ontario.

II. OVERVIEW -- THE FUNCTION OF THE OFFICE AND THE GENERAL SCHEME OF THE ACT

The Office of the Public Complaints Commissioner, and the complaints system under the Metropolitan Toronto Police

Force Complaints Act, 1984, are not intended to remove the power to discipline police officers from police management. Indeed, one of the purposes of the legislation is to encourage police management to be responsive to citizen complaints, and to accept and exercise disciplinary authority to that end. The Office of the Public Complaints Commissioner assists by:

- receiving complaints and, when appropriate, securing and preserving evidence;
- monitoring initial investigations by the police force;
- conducting initial investigations of complaints in some cases;
- reinvestigating and reviewing findings in complaints when the complainant is dissatisfied with the disposition of the matter by the Chief of Police;
- referring cases to a civilian Board of Inquiry when the Commissioner considers that a public hearing is required in the public interest;
- collecting data about complaints; and
- making recommendations about police policies and procedures to the Board of Commissioners of Police.

To the degree that police management is prepared to initiate and effect discipline itself and avoid the

intervention of the Office of the Public Complaints Commissioner, the process serves to promote police/community harmony. To the degree that the intervention of the Office of the Public Complaints Commissioner is necessary in its role of review and, on occasion, of causing public hearings of complaints before independent civilian Boards of Inquiry, the process serves to provide checks and balances to a system that was once perceived to be closed and partial.

The Boards of Inquiry, created under the Act, are administrative tribunals independent of the Office of the Public Complaints Commissioner. The Boards, which may be composed of one or three persons, hear and decide upon allegations of misconduct. When misconduct is proved beyond a reasonable doubt, the Board imposes discipline directly upon police officers.

Police officers themselves have recourse to Boards of Inquiry in circumstances in which the Chief of Police has ordered a Police Act trial arising from a citizen complaint. The subject officer has a right of appeal from a finding of misconduct by the Police Act tribunal to a Board of Inquiry established under the Metropolitan Toronto Police Force Complaints Act, 1984.

SUMMARY OF POLICE OFFICERS' RIGHTS UNDER THE LEGISLATION

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The heavy involvement of police management and the Police Association in the creation of the legislation and in amending it in 1984 is reflected in the extensive rights enjoyed by police officers under this Act. To summarize, the rights and benefits accorded police officers under the complaints legislation include initial investigation of complaints in almost all cases by the police force; a definition of misconduct which is congruent with the Police Act; safeguard provisions to deal with frivolous, : vexatious, or bad faith complaints; extensive disclosure throughout the process; the criminal standard of proof at disciplinary hearings, and extensive procedural protections at a hearing. (For example, the officer is not required to give evidence at a hearing, and no required statement or answer made by the officer is admissible in evidence at the hearing except with the officer's consent.)

DETAILED LIST OF OFFICERS' RIGHTS

The following is a detailed list of rights and benefits enjoyed by police officers under the Act, in the order in which these rights come into play.

A. OFFICERS' RIGHTS DURING INVESTIGATION OF A
COMPLAINT

1. "Misconduct" is defined and is consistent with and limited to only those acts and omissions that constitute an offence under the Code of Offences in the Regulations of the Police Act. s. 1(g) of the Metropolitan Toronto Police Force Complaints Act, 1984.
2. Allegations, which, even if proved, would not amount to misconduct are treated as inquiries (not formal complaints) and do not affect any individual police officer. s. 8 of the Act.
3. Allegations that are frivolous, vexatious, or made in bad faith can be screened out by the Chief of Police, subject to review by the Public Complaints Commissioner. s. 13(1)(a) of the Act.
4. Other than in specific instances narrowly defined in the legislation, the complaint is initially investigated by the Public Complaints Investigation Bureau of the police force rather than by the Office of the Public Complaints Commissioner. s. 11(1) of the Act.

5. The officer must be informed of the substance of the complaint immediately, unless immediate information would jeopardize the conduct of an investigation. s. 9 of the Act.
6. Informal resolution can only be attempted with the consent of the officer. s. 10(1) of the Act.
7. No complaint can be resolved informally without the officer's agreement. s. 10(2) of the Act.
8. No reference to a complaint resolved informally can be made in the personal record of an officer, except where misconduct has been admitted by the officer. s. 10(8) of the Act.
9. The officer must receive an investigation report approximately 30 days after the complaint is made and on a monthly basis thereafter unless the investigation of the complaint would be adversely affected thereby. s. 11(2) and (3) of the Act.

10. The officer must receive a final report at the end of the investigation. This final report shall contain a summary of the investigation and information obtained from the complainant, subject officer and witnesses, and description and analysis of physical evidence obtained. s. 11(4) and (5) of the Act.

B. OFFICERS' RIGHTS DURING SUMMARY DISCIPLINE BY CHIEF
OF POLICE

11. The Chief or his designate must allow the officer 10 working days to reply to a complaint, prior to giving a counsel or caution. s. 14(1)(d) of the Act.
12. A counsel or caution is expunged from the police officer's personal record if there is no discipline imposed during the subsequent two years. s. 14(5) of the Act.

C. OFFICERS' RIGHTS DURING INTERNAL DISCIPLINE TRIALS
ORDERED BY THE CHIEF OF POLICE UNDER THIS -
LEGISLATION S. 14(1)(c)

13. The standard of proof is beyond a reasonable doubt.
s. 15(1) and 23(15) of the Act.
14. The officer has the opportunity to examine any written
or documentary evidence or any report that will be given
in evidence at the hearing. s. 15(1) and 23(6) of the
Act.
15. The hearing is recorded and a transcript can be
obtained. s. 15(1) and 23(8) of the Act.
16. The officer is not required to give evidence at the
hearing. s. 15(1) and 23(13) of the Act.
17. No statement or answer required to be given by the
officer in respect of the complaint is admissible in
evidence at the hearing except with the officer's
consent. s. 15(1) and 23(13) of the Act.
18. No statement made by the officer during attempts at
informal resolution is admitted at the hearing except

with the officer's consent. s. 15(1) and 23(14) of the Act.

19. The Police Act Code of Offences and penalty provisions apply. s. 23(16) and (17) of the Act.

20. Appeal can be made to a Board of Inquiry under the Metropolitan Toronto Police Force Complaints Act, 1984, and subsequently to Divisional Court. s. 16 of the Act.

D. OFFICERS' ADDITIONAL RIGHTS DURING REVIEW BY THE
PUBLIC COMPLAINTS COMMISSIONER

21. The officer is informed if the matter is reviewed.

22. The officer is informed of the Public Complaints Commissioner's decision. s. 19(4) of the Act.

E. OFFICERS' ADDITIONAL RIGHTS DURING BOARDS OF INQUIRY
UNDER THE METROPOLITAN TORONTO POLICE FORCE
COMPLAINTS ACT, 1984

23. The standard of proof is beyond a reasonable doubt.
s. 23(15) of the Act. This standard is unique in
professional disciplinary proceedings.
24. The officer has the opportunity to examine any written
or documentary evidence or any report that will be given
in evidence at a hearing. s. 23(6) of the Act.
25. The hearing is recorded and a transcript can be
obtained. s. 23(8) of the Act.
26. The officer is not required to give evidence at the
hearing. s. 23(13) This is so notwithstanding section
12 of the Statutory Powers Procedure Act, R.S.O. 1980,
c. 484.
27. No statement or answer required to be given by the
officer in respect of the complaint is admissible in
evidence at the hearing except with the officer's
consent. s. 23(13) of the Act.

28. No statement made by the officer during attempts at informal resolution is admissible at the hearing except with the officer's consent. s. 23(14) of the Act.
29. The Police Act Code of Offences applies. s. 1(g)
30. The disciplinary powers of the civilian Board are consistent with disciplinary powers of tribunals under the Police Act. s. 23(16) and (17)
31. Video and audio recordings of Board hearings are not allowed unless all parties to the hearing consent.
s. 27
32. No reference to a Board of Inquiry is made in the personal record of the officer unless the Board has made a finding of misconduct. s. 23(19)
33. Statements obtained in the course of the investigation into a citizen's complaint shall only be admissible in a hearing under the Act or the Police Act and not in any civil suit or proceeding. s. 26(3) and (4)

34. The officer has a right to receive written notice of the Board's decision and reasons therefor. s. 23(18)
35. The officer has a right to appeal a decision of the Board to Divisional Court. s. 24

EXCERPTS OF ORAL SUBMISSIONS BY

THE METROPOLITAN TORONTO POLICE ASSOCIATION

BEFORE THE STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RE: METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT,

SEPTEMBER 22, 1981

EXCERPTS OF ORAL SUBMISSIONS BY THE METROPOLITAN TORONTO
POLICE ASSOCIATION BEFORE THE STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE RE: METROPOLITAN POLICE FORCE
COMPLAINTS PROJECT ACT, SEPTEMBER 22, 1981

Mr. Walter: (At pages 1 and 2) "First of all, on behalf of the Association, I would like to thank the Committee for giving us this opportunity to present our views and make representations in respect of the provisions encompassed in the proposed legislation.

"Our Association represents approximately 5,300 uniformed police officers. As well, there are approximately 1,200 civilian members of the Force. In the overwhelming majority of cases the public complaints, which are the subject matter of the proposed legislation, will be complaints respecting the conduct of our members. Members of the Committee will therefore appreciate our deep concern with the provisions of the legislation and the proposed procedures for handling citizen complaints.

"We have always recognized the importance of providing an effective means by which a member of the public, who feels he has been wronged or mistreated by a police officer, may have a free and ready means by which he may register his

complaint, have it thoroughly and impartially investigated and satisfactorily resolved expeditiously and fairly. In the main, we think that the proposed legislation provides that means.*

"Members of the Committee will also appreciate, however, that we are just as concerned with the protection of the rights of the police officers against whom complaints are made. I cannot over-emphasize that point. It should equally be the objective of the legislation to ensure that such police officers receive fair and equitable treatment and protection against malicious and frivolous complaints. Again I can say the legislation goes a long way towards meeting our concerns in this regard.*

"There are, however, one or two respects in which we respectfully submit the Bill should be improved."

(Mr. Walter then discussed his views on informal resolution of complaints; protection against "double jeopardy"; and protection against statements or admissions obtained in the course of an investigation into a citizen complaint being used for purposes other than under the Act.)

.....

Mr. Walter and Mr. Philip, the Honourable Member for Etobicoke, discussed police concerns about in-house investigations and Police Act trials:

Mr. Philip: (At pages 20 and 21) "Some of the police officers I have spoken to seem to feel they were under the gun much more by an in-house investigator than by a properly qualified, well-trained, out-of-house investigator."

Mr. Walter: "Yes, I do not share your views. We have had numerous general meetings of the membership with regard to citizen complaint procedure, the different bills that were proposed in the past. There was Bill 112, I believe, Bill 114, Bill 47. There were certain provisions in those bills that gave us concern.

"The individuals you were talking to-- I do not know how long the conversations were, but they were probably more concerned not that the actual investigations were being done with a certain viciousness by our in-house investigators; but they were more concerned with the handling or the disposition of the complaints through the Police Act trial system. Of course, we have an individual who is generally a superintendent who is designated by the Chief of Police to conduct the different hearings into police conduct.*

* Emphasis Added

"That is where our membership perceives there are certain tactics taken which are not in keeping with the rules of evidence. In layman's terms, they feel that it is a "kangaroo court."* I have not talked to anyone who is really concerned about anything other than the efficiency of the investigation. They have said, "Jesus, I wish they would let up." They have not let up because the in-house investigators have really pursued their mandate with vigour. It is more from the aspect of the adjudication. Here we have a system of either a tribunal or a single person appointed by the Commissioner who will hear these complaints. I think that will be extremely fair and impartial.* I will be looking at some of the results of this adjudication, particularly at penalty. I do not think the penalties will be nearly as severe as the penalties which are meted out now by the present system of justice we have as far as the Police Act is concerned....

"Our members' anxiety is very great with regard to continually being under the gun as it pertains to citizen complaint procedure. They want the procedure enacted. This Bill basically provides the proper arena and avenues to have a citizen's complaint effectively investigated and impartially adjudicated. That is what we are looking at.*

*Emphasis added

(For a full text of Police Association's oral submission to Standing Committee on Administration of Justice, September 22, 1981, see Appendix, Vol. 1, Tab 2.)

EXCERPTS OF ORAL SUBMISSIONS OF THE CHIEF OF POLICE
BEFORE THE STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE
RE: METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT,
OCTOBER 6, 1981

EXCERPTS OF ORAL SUBMISSIONS OF THE CHIEF OF POLICE BEFORE
THE STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE - RE:
METROPOLITAN POLICE FORCE COMPLAINTS PROJECT ACT,-
OCTOBER 6, 1981

Chief Ackroyd: (At page 1) "We do welcome Bill 68. We think it is a very progressive step forward in the changes that have evolved over the last 10 years or 15 years in handling citizens' complaints against police officers on our force."

.....

Chief Ackroyd: (At page 3) "The next step in the evolution of this business of handling complaints against police officers came with the appointment of Mr. Sidney Linden in June 1979, and you people have all seen the end result of his appointment in the drafting of the legislation.

"Again, a man like Mr. Linden has come in and studied this, and has recommended that the initial investigation, with an interim report being submitted within 30 days, should be done by the Metropolitan Toronto Police Force. He

has implemented most of the recommendations of Arthur Maloney in his model as well, although there are some slight differences. He strongly agrees with Mr. Maloney, Mr. Justice Morand, Mr. Pitman and Mr. Carter that the initial investigation should be done by police officers."

.....

Chief Ackroyd: (At page 4) "We feel that the review provisions in the Bill are adequate. We feel they are fair. There could be a complete review of the investigation; there could be, in a sense, a new hearing or a de novo trial held. People from the community can sit on a three-man panel dealing with serious cases. And, of course, the Public Complaints Commissioner can do everything--he has the same powers as the Chief of Police as far as discipline is concerned -- from dismissing the police officer from the force down to reprimanding him. He has that much authority in a review situation. There is a provision, of course, for an ultimate appeal to a divisional court on a point of law.*

*Emphasis Added

"In closing, I would like to say that I strongly believe this Bill deserves a fair trial. There has been quite a history, as I have reviewed very quickly with you, of how complaints against police officers have been handled in this particular city. When Mayor Sewell was mayor, all the mayors of Metropolitan Toronto -- and there are six of them -- plus the Metro Chairman, the Police Commission, the former head of the Police Association and the present President, and the former Chief and myself, have all indicated that we want to do everything within our authority to support this legislation, to do everything we can to make it work, and that has always been the position taken by all those people.*

We really feel this Bill should be given an opportunity to be tried in the city to see how it works, and we can assess it from that point on.

.....

Chief Ackroyd: (At page 6 and 7) "I think my first observation would be to dig out the actual recommendation of Mr. Arthur Maloney. I just scanned it the other day and

*Emphasis Added

noticed, on page 246 of his report, that he recommended a pool of somewhere in the neighbourhood of 60 people. He had 15 appointed by the Police Association, 15 by the Chief and the senior officers of the force, 15 from Metro Council and 15 legal people. I think this a far better balance than the previous recommendation by Arthur Maloney.

"I would hope that the Police Commission and Police Association would come up with names of people who are responsible citizens. When you talk about citizens "being pro-police," I think it is imperative that citizens who serve on a committee like this, which is to hand out discipline, have to think of the community. Being pro-police might mean that are very hard on police officers and very severe in how they deal with them, because that is one way of protecting the citizens from any abuse of authority by police officers.*

"I am not sure what you mean when you say "pro-police." I would hope anybody who is pro-police would be a good disciplinarian. I am very pro-police, having been in the business 35 years now, and I still believe, to maintain a good police force, you have to have good discipline."*

.....

*Emphasis Added

Chief Ackroyd: (At page 16) "It would be my responsibility as a police officer to do everything I can to uphold the law that is written."

.....

Chief Ackroyd: (At page 16) "If you are alluding to whether the men will cooperate, say, hypothetically to some type of an independent review--is that really what you are asking?"

Mr. Philip: "If that were the pleasure of the Legislature."

Chief Ackroyd: "If that were the case, I think what they would do in all probability is look for some direction from the head of the Police Association rather than from the Chief of Police. If you talk to some of them, they indicate: "Why are we being treated as second-class citizens? Why are we treated differently from other people? Have we not got the right to counsel when we are being questioned?" *

.....

*Emphasis Added

Chief Ackroyd: (At page 17) **"As I say, two Chiefs of Police and two heads of the Police Association, plus the other people I commented on, all indicated they are very prepared to try to make this model work. We think it is a very progressive step forward."***

.....

Chief Ackroyd: (At page 35) "I can only give you a perception of what I think the morale would be. The personnel are being made aware by the President of the Police Association at their meetings of how this model works. **The President has assured them that he is going to cooperate with it.*** The men are aware of what is proposed here and aware that these interim reports are going over the the P.C.C. within 30 days. There has been no kind of hue and cry from the rank and file. The former Chief and myself and the members of the Police Commission and all the other people I have mentioned have supported this model. With that kind of support, the personnel seem to be ready to accept it and work within this model."

*Emphasis Added

(For a full text of the oral submissions of the Chief of Police to the Standing Committee on Administration of Justice - October 6, 1981, see Appendix, Vol. 1, Tab 3.)

REQUESTS FOR AMENDMENTS TO THE

METROPOLITAN TORONTO POLICE FORCE COMPLAINTS ACT, 1984

BY THE METROPOLITAN TORONTO POLICE ASSOCIATION

AND BY THE CHIEF OF POLICE

A. THE POLICE ASSOCIATION AND THE CHIEF OF POLICE JOINTLY
REQUEST THAT:

- (1) There be a limitation period defining the time within which a complaint may be lodged.
- (2) Criminal court judges, or retired criminal court judges be appointed as chairpersons of Boards of Inquiry.
- (3) The criminal rules of evidence apply to proceedings at a Board of Inquiry.

B. THE CHIEF OF POLICE FURTHER REQUESTS THAT:

- (4) The power of the Board of Inquiry to discipline directly be replaced with only the power to recommend discipline to the Chief of Police.
- (5) A police officer's conduct when not on duty and not exercising authority as a police officer, be excluded from the jurisdiction of the M.T.P.F.C.A., 1984.

- (6) There be a statutory decision of "exonerated" and that any record of a complaint be deleted from police records when an officer is exonerated by the Chief of Police.

C. THE POLICE ASSOCIATION FURTHER REQUESTS THAT:

- (7) All criminal allegations be heard in a criminal court and that Boards of Inquiry be limited to hearing complaints which do not contain allegations which could amount to criminal conduct.
- (8) The Police Association have the power to challenge the selection of a panel member on a Board of Inquiry at the time the Board is convened to hear a case.
- (9) The appeal route available to an officer found guilty at a Board of Inquiry or Police Act hearing include a hearing de novo before the Board of Commissioners of Police or the Ontario Police Commission.

- (10) The role of counsel on behalf of the Attorney General be limited to be neither prosecutorial nor adversarial.
- (11) A ban on publication be imposed on Board of Inquiry hearings.
- (12) Major and minor offences should be statutorily defined.
- (13) "The Police Officer's Bill of Rights" be included as a Schedule to the Metropolitan Toronto Police Force Complaints Act, 1984.

RESPONSES OF THE OFFICE OF

THE PUBLIC COMPLAINTS COMMISSIONER

A. POLICE ASSOCIATION AND CHIEF OF POLICE JOINT REQUESTS

1. REQUEST THAT THERE BE A LIMITATION PERIOD DEFINING
THE TIME WITHIN WHICH A COMPLAINT MAY BE LODGED

The propriety of a clause limiting the time within which a complaint must be lodged has been the subject of correspondence between the Public Complaints Commissioner, the Chief of Police and the Attorney General of Ontario.
(Correspondence attached.)

Address all correspondence to the Chief of Police



Metropolitan Toronto Police

590 Jarvis Street, Toronto, Ontario, Canada. M4Y 2J5

(416) 967-2222



JACK MARKS, *Chief of Police*



Please reply attention of

File No.

March 13, 1987.

The Honourable Ian Scott, Q.C.,
Attorney General for the Province of Ontario,
18th Floor,
18 King Street East,
Toronto, Ontario.
M5C 1C5

Dear Mr. Scott:

On behalf of the Metropolitan Toronto Police Force, I wish to recommend that the Metropolitan Toronto Police Force Complaints Act, 1984 be amended to include a six (6) month limitation period for the recording of complaints.

I feel that it is important that such a standard be incorporated in the legislation, in order to clarify the matter of jurisdiction in the minds of all parties involved.

Preliminary discussions were conducted between members of the Force and the Office of the Public Complaints Commissioner and I am pleased to report that we are in agreement on this issue.

I feel that it is important that the present Metropolitan Toronto Police Force Complaints Act, 1984 be amended as soon as practicable. We have dealt with matters where the complainant has taken three years to lodge his complaint. I do not believe that we should wait for the introduction of a province-wide complaint review scheme to incorporate a limitation period in the present Act.

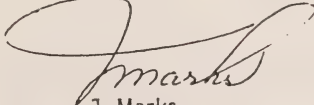
As such, please find appended, a sample of the suggested wording which would appear to meet the approval of the Public Complaints Commission and the Metropolitan Toronto Police Force.

- 46 -

- 2 -

I am hopeful that you will give this recommendation swift attention and that you will keep us informed of its progress.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "J. Marks". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

J. Marks,
Chief of Police.

Att.

cc. Mr. Clare Lewis, Public Complaints Commissioner

- LIMITATION 6(7)** No complaint under this Act lies against a police officer unless such complaint is recorded within six (6) months from the date of the alleged misconduct.
- IDEM 6(8)** Notwithstanding subsection (7) where the Commissioner is satisfied that there are reasonable grounds to extend the time of or the recording of the complaint, the Commissioner may extend the time period and he shall give reasons thereof in writing to the person in charge of the Bureau, the subject officer, the complainant and the Chief of Police and in such event the complaint shall continue to be directed as a complaint under this Act.
- REVIEW OF DECISION 6(9)** The decision of the Commissioner under subsection (8) shall be deemed to be made in the exercise of a statutory power of decision within the meaning of the Judicial Review Procedure Act.

OFFICE OF THE PUBLIC
COMPLAINTS COMMISSIONER

157 Bloor Street West
Toronto, Ontario M5S 1P7

(416) 963-3564 — Administration
(416) 963-1141 — Investigations



March 30, 1987

BUREAU DU COMMISSAIRE AUX
PLAINTES DU PUBLIC

157, rue Bloor ouest
Toronto, Ontario M5S 1P7

(416) 963-3564 — Administration
(416) 963-1141 — Enquêtes

C.B.

16777

The Honourable Ian Scott
Attorney General
Ministry of the Attorney General
18th Floor, 18 King Street East
Toronto, Ontario
M5C 1C5

Dear Mr. Attorney:

You may recall that some months ago I discussed with you my view that it would be appropriate to amend the Metropolitan Toronto Police Force Complaints Act, 1984, to provide a limitation period for the receiving of complaints. I have discussed this matter at length with senior police officers and have considered it with members of my staff.

It may be, although it is unclear, that the Public Authorities Protection Act operates by s.11 to provide a limitation period of six months to any complaint under the Metropolitan Toronto Police Force Complaints Act, 1984. The police and I are of the view that there is a legitimate value to the introduction of some certainty in this matter. While very few complaints are lodged beyond six months from the time of the incident giving rise to the complaint, police generally are uneasy about the possibility of vulnerability to aged matters, and are on occasion incensed by the lodging of complaints which have no apparent justification for their delay in filing.

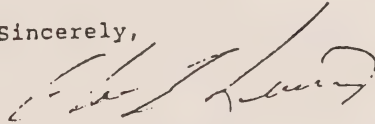
In cooperation with police management I have agreed on a proposed wording of a limitation section for the Act. I believe that the Chief of Police has sent you a copy of the proposal, and I am enclosing a copy with this letter. While we do not presume to intrude on the role of the legislative draftspersons, we felt that providing you with a suggested wording might assist in your arriving at a decision.

You will note that the proposal provides the Commissioner with discretion to extend the time period for the recording of a complaint, subject to judicial review. In my view, that is a reasonable trade-off which provides a needed safety valve.

The Honourable Ian Scott
Page 2
March 27, 1987

I would appreciate your considering this matter and giving your decision on it as soon as possible.

Sincerely,



Clare E. Lewis
Public Complaints Commissioner

ml
Encl.
cc: Chief Jack Marks
Mr. Douglas Ewart
Director, Policy Development
Division

April 30, 1987

Mr. Clare Lewis
Commissioner
Office of the Public Complaints Commissioner
157 Bloor Street West
Toronto, Ontario
M5S 1P7

Dear Clare:

I wish to acknowledge your letter of March 30, 1987, concerning the provision of a limitation period under the Metropolitan Toronto Police Force Complaints Act.

I have considered very carefully the views which you and the Chief of Police have expressed on this subject. In light of the fact that the filing of a complaint will result in a hearing only if either the Chief of Police or you orders one, I am of the view that a limitation period is unnecessary. It seems to me that individuals with concerns about police conduct should be able to have those concerns looked into without regard to the sometimes artificial barriers which a limitation period could create.

I appreciate very much the time and thought which you and the Chief of Police have given to this matter. Should we have an occasion in the future to substantially revise the procedural provisions of the Act, it may be that the issue of a limitation period could be reconsidered at that time.

Thank you very much for letting me have your views on this matter.

Yours very truly,

IAN SCOTT
Attorney General

2. REQUEST THAT CRIMINAL COURT JUDGES OR RETIRED
CRIMINAL COURT JUDGES BE APPOINTED AS CHAIRPERSONS
OF BOARDS OF INQUIRY

The Maloney Report to the Metropolitan Board of Commissioners of Police (1975) referred to the composition of the "trial tribunal" at pages 218 to 219. (See Appendix, Vol. 3.) The report states:

"The Chairman of the panel shall be someone trained in the rules of evidence that apply in court proceedings, preferably a lawyer experienced in the practice of advocacy in the courts -- not one whose practice is mainly in the field of criminal law because of the close association and rapport that so often understandably and desirably develops between him and the police.* He might also be a retired judge of the Supreme, County or Provincial Courts.

Mr. Maloney canvassed the concerns of the Metropolitan Toronto Police Association before making his recommendations in 1975. The Police Association membership at that time recommended to Mr. Maloney that:

*Emphasis Added

"Hearings into such allegations [of misconduct] should take place before a panel of three, one of whom would be the appointee of the Chief of Police, one of whom would be the appointee of the Police Association, and one of whom would be a civilian, perhaps a lawyer trained in the rules of evidence and courtroom procedure. Another specific suggestion was that these complaints be heard by a provincial court judge or an analogous appointee of the provincial government." (At page 133 of the Maloney Report.)

In his submissions to the Standing Committee on the Administration of Justice in 1981, Mr. Paul Walter, of the Metropolitan Toronto Police Association, stated that the proposed system for the composition of the Board of Inquiry under the 1981 Act would "be extremely fair and impartial." (Committee Hearing, September 22, 1981, at page 21, see Appendix, Vol. 1, Tab 1.) No reference to a provincial court judge was made by the Police Association at this time.

Other groups before the Standing Committee on the Administration of Justice in 1981 were concerned that the Act created an unfair advantage in favour of the Police Association with regard to the composition of the Board of Inquiry.

The Coalition Against Bill 68, which included the Urban Alliance on Race Relations, submitted that the section which provided for joint recommendations by the Commissioners of Police and the Police Association for appointment to the Board of Inquiry was "unsatisfactory and unfair."

(Committee Hearing, September 24, 1981, at page 10. See Appendix, Vol. 1.) The group was concerned that the police had a "direct say in who will represent them on the Police Complaints Board, but the public does not." (At page 4 of the Coalition Against Bill 68, Vol. 1, Tab 6.)

The National Black Coalition of Canada, the Mayor's Committee on Community and Race Relations and the Albert Johnson Committee expressed concern about the absence of statutory provisions to ensure representation of visible minorities on the Boards of Inquiry. Other submissions made recommended that at least one-third of the Board members be elected in municipal elections. (See Appendix, Vol. 1, Tab 6, 8, 9.)

Others have addressed the issue of judges sitting on Boards of Inquiry. The Criminal Lawyers' Association has recently stated:

"There is no Judge that sits on the board of inquiry. There is, however, a lawyer trained in the law that sits as chairperson. The police demand that a Judge be the arbiter. This, of course, would hardly make for a truly civilian complaints system. A Judge who has police officers appearing before him or her so often as witnesses and sometimes as accused, would not present an appearance to the community of being unbiased. In the Toronto Star article of June 27, 1987, it was noted that the police have a credibility edge over a civilian in a courtroom. A number of explanations were offered for this (some of which may have more merit than others): There is an identification by Judges with the officer as part of the same structure of authority; there is concern by Judges that the finding of credibility against an officer in a particular case will impair the officer's credibility in other cases when his or her testimony is necessary for a conviction; there is concern that giving the citizen full benefit of the doubt when his evidence conflicts with the police will lead to too many acquittals and give the public the impression that the courts are too soft; there is the realization that the police officer's professional standing is on the line in that a conviction for assaulting a civilian

would be used against the officer in an internal disciplinary proceeding or before the Public - Complaints Commission and could also affect a civil suit against the officer; the belief that police officers are professional witnesses who could make more reliable observations under pressure than civilians; and the selection of most Judges from privileged economic and social environment where they are not likely to have been routinely harassed by the police. Whether or not these observations are true with respect to a particular judge is not as important as the public perception as to their truth. The simple fact remains, the percentage of police officers convicted for assaults is extremely low compared to civilian convictions for assault." (See pages 7 - 8 of submission to Attorney General, at page 145 of Brief.)

The Canadian Civil Liberties Association has recently said that:

"The Police Association has said that serious criminal allegations against them should be heard, not by the complaints system, but by the criminal courts. There, the rules of evidence are tighter and the decisions are made by real judges.

In our view, these arguments are simply devoid of merit. Judges have no monopoly on legal wisdom. Our society has all kinds of competent adjudicators who are not judges. Many of them have been chosen precisely because of their superior expertise in their areas of jurisdiction. The closest analogy to police complaints adjudication is labour arbitration where, for some years, the use of judges has been discouraged without perceptible damage to the resulting jurisprudence." (At page 3 of submission to Attorney General, at page 135 of Brief.)

Judges do not normally preside over disciplinary bodies. They do not sit on discipline hearings of lawyers, doctors or steamfitters.

The present system of Board composition is in keeping with the spirit of the intended legislation, which ensures that the Boards of Inquiry are representative of the population of Metropolitan Toronto.

The joint involvement of the Attorney General and the Solicitor General in the selection of the legally-trained chairpersons ensures that the Boards of Inquiry are presided over by qualified and experienced legal counsel.

Losing some cases before a tribunal is not adequate cause to radically change the nature or composition of the tribunal.

3. REQUEST THAT THE CRIMINAL RULES OF EVIDENCE APPLY
TO PROCEEDINGS AT A BOARD OF INQUIRY

The Statutory Powers Procedure Act affords police officers and parties before Boards of Inquiry the same protection available to any professional facing a disciplinary hearing. The Statutory Powers Procedure Act provides for the admissibility of evidence which is "relevant to the subject matter of the proceedings." It further provides that nothing is admissible in evidence at a hearing which would not be admissible in a court by reason of any privilege under the law of evidence or which is inadmissible by the statute under which the proceedings arise or any other statute. The Statutory Powers Procedure Act in conjunction with specific provisions of the Metropolitan Toronto Police Force Complaints Act, 1984 provides considerable protection to police officers facing disciplinary proceedings before Boards of Inquiry.

Special protections provided by the Metropolitan Toronto Police Force Complaints Act, 1984, in addition and in lieu of the provisions of the Statutory Powers Procedure Act, are outlined in detail in the Summary of Police Officers' Rights set out in this Brief and include the right to remain silent, the standard of proof beyond a reasonable doubt, and protection against any required statement made by an officer being admitted without consent.

The Police Association has argued that officers are endangered before Boards of Inquiry because hearsay evidence may be admissible. It is true that the Statutory Powers Procedure Act does not render hearsay evidence inadmissible. However, it is clear in law that a decision cannot be founded on irrelevant evidence. (R. v. Barber, et al., Ex p. Warehousemen and Miscellaneous Drivers' Union, Local 419, [1968] 2 O.R. 245.) Furthermore, the admissibility of hearsay evidence may operate to the benefit of the subject officer.

The reality of proceedings before Boards of Inquiry is that the admissibility of hearsay, as understood by the Police Association, has not been a factor in any way harmful to a subject officer. The Police Association concerns about hearsay may be illustrated by a witness saying that he was told by another person what that person said, heard, saw or did. It has not been the practice for counsel on behalf of the Attorney General to lead evidence of this type. However, counsel on behalf of officers, without objection, have led this type of evidence when it favoured them.

Other professionals facing discipline are subject to the civil rules of evidence. The Law Society Act R.S.O. 1980 c. 233 provides:

s. 33(9): The rules of evidence applicable in civil proceedings are applicable at a hearing, except that an affidavit or statutory declaration of any person is admissible in evidence as prima facie proof of the statements made therein."

Many of the outlined provisions of the Metropolitan Toronto Police Force Complaints Act, 1984 tend to give these proceedings similarities of criminal proceedings especially the burden of proof, the right not to testify and the introduction of counsel acting on behalf of the Attorney General. To have judges preside and introduce full criminal rules of evidence would, in effect, render these proceedings indistinguishable from criminal proceedings save that no penalty of incarceration could be imposed.

Reference is made to the decision of Mr. Justice Morden in Re Trumbley and Pugh v. Toronto Police et al. (1986), 21 Admin. L.R. 232 (Ont.C.A.), at page 262:

"The appellants before us stress that the form and terminology associated with the proceedings under the Police Act are of a decidedly criminal cast. The police officer is "charged" with an "offence," is "tried," may be "found guilty" and then may be "punished." I accept that this is a feature of the police disciplinary proceedings that should be considered in favour of their being brought within the ambit of "offence" in s. 11 of the Charter. However, closely related to this feature is the characterization of these proceedings as being of a civil nature as far as the applicable standard of proof is concerned. It is not proof beyond a reasonable doubt but, rather, on a balance of probabilities. See Re Beuk and Ontario Police Commission, Ont. Divisional Court, January 10, 1978 at pp. 17-18 and Re Commission, March 21, 1986 at p. 7. This does not mean that within the civil standard there would not be some variation and that, accordingly, depending on the seriousness of the allegations and of the potential consequences, the application of the civil standard may require clear and convincing evidence for a case to be regarded as proven. The only purpose in mentioning this point is to indicate that, at least as far as standard of proof is concerned, Police Act proceedings have not been regarded as criminal

proceedings. In this respect they may be contrasted with prosecutions of provincial offences where the standard of proof is proof beyond a reasonable doubt.

Reference is made to the letter from the Canadian Civil Liberties Association to the Attorney General of Ontario dated January 27, 1988. (See p.136 of Brief.) At page 4 of the C.C.L.A. states:

"The rules on the admissibility of evidence in criminal courts are particularly tight because the consequences of conviction could mean a loss of liberty. The rules in the complaints system are less tight (but still tighter than in labour

arbitration) because there the most serious penalty is loss of employment. While the importance of job security cannot be minimized, it cannot be compared with going to jail. In any event, it would be hard to find actual examples where the current system has made dubious rulings on the admission of evidence."

The standard of proof available to professionals facing disciplinary proceedings is not proof beyond a reasonable doubt. At best, the professional is entitled to a standard of clear and convincing proof. Police facing disciplinary proceedings are granted the burden of proof otherwise granted to accused persons facing criminal sanctions and loss of liberty.

CONSTITUTION ACT, 1982, SECTION 96

Consideration must be given to the danger of creating what would essentially be a criminal court subject to a challenge as not being within the constitutional authority of the province.

B. REQUESTS OF THE CHIEF OF POLICE

4. REQUEST THAT THE POWER OF THE BOARD OF INQUIRY TO DISCIPLINE DIRECTLY BE REPLACED WITH ONLY THE POWER TO RECOMMEND DISCIPLINE TO THE CHIEF OF POLICE

In written submissions to the Standing Committee on the Administration of Justice in 1981, (see Appendix, Vol. 1), the representatives of the Metropolitan Toronto Police Force addressed the issue of discipline. The police force submitted at page 26:

"Turning to the matter of discipline, we are relieved that Bill 68 would leave the initial adjudicative and disciplinary determination in the hands of the Chief of Police. This is how it should be. Insofar as this issue was dealt with in the Maloney Report, we were opposed to the recommendation that the adjudicative function be transferred to a civilian complaints commissioner. To do this would not only deprive a Chief of Police of the ability to make adjudicative determinations where citizen complaints are involved -- decisions which are intimately related to disciplinary determinations -- but it would mark an erosion of the traditionally autonomous power and authority of

police chiefs to independently and internally deal with undesirable and/or violative behaviour. We would be opposed to any legislation whose direct or indirect effect might be a usurpation or attach upon the initial ability of the Chief of Police to control, and be seen to be in control of, the behaviour of members of his organization. This can hardly be viewed as an opportunity for 'cover-up' under the proposed scheme since section 15(1) of the proposed Bill would permit a complainant who is dissatisfied with the result of disciplinary action pursuant to the Police Act or with the decision of a chief of police to counsel, caution, or take no action in relation to the officer(s) concerned, to request that the Public Complaints Commissioner review the matter. The Public Complaints Commissioner, should such a request be received, is required to conduct a review of the matter and, to facilitate such action, is granted broad investigatory powers, including the right to appoint private investigators to conduct further investigations."

.....

"We wish to go on record as not being opposed to the broad powers of review that would be granted by Bill 68. We believe that they are necessary in order to assure the public that any appropriate dispositions which may occur are subject to challenge in fair and comprehensive review.* To go further, however, and to grant adjudicative or disciplinary powers to outsiders from the outset of proceedings would be destructive of internal control structures and be tantamount to a vote of non-confidence in the office of, and present incumbent, Chief of Police." (At page 27)

.....

"With respect to the hearing structure that is proposed, inter alia, for both dissatisfied citizens and appellate officers, it is our view that the system proposed is fair and equitable and adequately meets the demand for independent civilian review." (At page 28)

*Emphasis Added

Given the present structure of the Act, in which the police are afforded the initial opportunity of investigation and judgment, the Board of Inquiry must have power to impose discipline directly. To remove that power and grant the Board only recommendatory power would result in the Chief of Police being expected to seriously consider and perhaps impose recommended discipline in cases in which he had previously said no discipline was appropriate. Such a result would be invidious and would place the Chief of Police in an untenable position in his relations with his officers and would leave the public with no confidence in the integrity of the process. The inevitable result would the Chief of Police either being seen to reverse his earlier decision or conversely being seen as unwilling to reverse his earlier decision.

If the Boards of Inquiry are only to have recommendatory power then the necessary corollary to that proposition is that the police would have to give up the right to do the first investigation and the Chief's right to make the first decision on the investigation. In order to maintain the integrity of the complaint process in those circumstances, the entire process would have to be exclusively civilian, leaving to the police only the right of the Chief of Police to decide whether or not to follow a Board recommendation.

5. REQUEST THAT A POLICE OFFICER'S CONDUCT WHEN NOT
ON DUTY AND NOT EXERCISING AUTHORITY AS A POLICE
OFFICER BE EXCLUDED FROM THE JURISDICTION OF THE
ACT

The Metropolitan Toronto Police Force Complaints Act, 1984, empowers the Commissioner to investigate all allegations which constitute misconduct as defined under Regulation 791 - the Code of Offences of the Police Act. If the Chief of Police has jurisdiction to discipline a police officer, the Public Complaints Commissioner has equal jurisdiction to investigate an identical allegation arising from a citizen's complaint.

On December 1, 1987, the Divisional Court rejected the proposition advanced by the Chief of Police. It held that a complaint against two off-duty police officers who were alleged to have assaulted a civilian, without identifying or using their authority as police officers, was within the jurisdiction of the Metropolitan Toronto Police Force Complaints Act, 1984. (See Application for Judicial Review Re Jack Marks, Chief of Metropolitan Toronto Police Force and Clare E. Lewis, Public Complaints Commissioner -- Appendix, Vol. 2, Tab 12.)

6. REQUEST THAT THERE BE A STATUTORY DECISION OF
"EXONERATED" AND THAT ANY RECORD OF A COMPLAINT BE
DELETED FROM POLICE RECORDS WHEN AN OFFICER IS
EXONERATED BY THE CHIEF OF POLICE

There is no need for a statutory decision of "exonerated" at the option of the Chief of Police. The present legislation states in subsection 14(1) of the Metropolitan Toronto Police Force Complaints Act, 1984 that the Chief may decide that "no further action is warranted." It is always open to the Chief to state in his reasons that the officer is exonerated on the evidence.

The Act provides that no reference to a Board hearing shall be made in the personal record of the subject officer unless the Board has made a finding of misconduct (section 23(19)). This protection does not exist in the Police Act.

It would be ill-advised to delete the mention of a citizen's complaint in police files. There are many reasons that records of public affairs, including public complaints, should be maintained. Police management is capable of dealing with these records in a fair and equitable manner. Police management needs to be aware of the number and nature of the complaints received so that they may take appropriate managerial steps to address persistent concerns.

The issue of reducing the recorded number of apparent complaints is further compounded by police management. There has been frequent incorrect application of the power to declare certain complaints non-jurisdictional under section 13(1) of the Act. This issue has been the subject of many statements by the Office of the Public Complaints Commissioner that a complaint which is not substantiated by evidence is not non-jurisdictional, but rather merely to be dismissed or to be declared one in which no action is warranted. Present management position on this important issue operates to skew necessary and important statistics with the result of an appearance that there are fewer complaints than there really are, and also operates to deny complainants entitlement under the Act. Attached is a copy of recent correspondence to police management on the issue.

OFFICE OF THE PUBLIC
COMPLAINTS COMMISSIONER

157 Bloor Street West
Toronto, Ontario M5S 1P7

(416) 963-3564 — Administration
(416) 963-1141 — Investigations



BUREAU DU COMMISSAIRE AUX
PLAINTES DU PUBLIC

157, rue Bloor ouest
Toronto, Ontario M5S 1P7

(416) 963-3564 — Administration
(416) 963-1141 — Enquêtes

January 6, 1988.

Deputy Chief Peter Scott,
Metropolitan Toronto Police Force,
590 Jarvis Street,
6th floor,
TORONTO, Ontario.
M4Y 2J4

Dear Deputy Scott:

I refer to five complaints which you have recently decided are not complaints within the jurisdiction of the Metropolitan Toronto Police Force Complaints Act, 1984. It is my position that these complaints are within the jurisdiction of the Act. I am requesting that you reconsider them. In my view, they ought to be dealt with as complaints pursuant to section 7 of the Act.

I am sure that you will recall our discussions of your use of section 13(1)(b) of the Act on previous occasions. It remains my position, and with respect, the law, that a complaint which contains allegations which, if proved, would constitute misconduct is within the jurisdiction of the Act. The Act requires that the Bureau investigate such allegations and prepare a Final Report for your decision.

Your use of section 13(1)(b) of the Act in the circumstances of the attached complaints operates to thwart the purpose of the Act. While you may, following a complete investigation and Final Report, well decide that no action is warranted, it is not appropriate for you in cases such as these to avoid a complete investigation, a Final Report and a judgment by classifying the complaint as non-jurisdictional when it is clearly within the jurisdiction of the Act.

Your frequent use of section 13(1)(b) in circumstances which I believe to be incorrect will have a very real and damaging effect in the light of the intent of this legislation. In the first place, as you know, I can only review your decision that a matter is non-jurisdictional if a complainant requests that I do so. Failure by complainants to request reviews results in improper decisions being left unremedied. I have no doubt that many complainants when told, albeit wrongly, that their complaint is not within the jurisdiction of the Act will accept your statement at face value and not seek a review. Further, the incorrect use of section 13(1)(b) will have the distinct effect of skewing the statistics compiled under this Act. It is important for the public and for your force to know how many complaints are made and the nature of them. To declare a complaint to be non-jurisdictional incorrectly is to deprive it of the status of a complaint and to give an appearance of fewer complaints than actually exist. Such a result distorts reality, and will require me to set the record straight.

The following files are very recent examples which give rise to the expressed concern.

The PALINIC file (your file #555-8-87) and the CRUZ file (your file #439-9-87) both contain allegations of Neglect of Duty in the investigation of motor vehicle accidents. The PALINIC complaint also contains a suggestion of bias in the investigation of the accident stemming from an assertion that the other driver in the accident was a civilian member of the Metropolitan Toronto Police Force. Each of these files was investigated for over four months and in each letter you review the evidence and conclude there is no evidence of misconduct. However, instead of simply concluding that no action is warranted, you invoke section 13(1) of the Act.

The KELLEY complaint (your file #651-10-87) is an allegation of Discreditable Conduct. The complainant alleges that the officer refused to allow him the opportunity to take a breathalyzer test and attended at his residence later than midnight the following day to give him a ticket for the same offence. The complaint was investigated for one month. In your letter, you explain the breathalyzer issue as police force procedure, and make no comment on the hour at which the officer allegedly appeared at the complainant's residence, other than stating that the officer did not issue the complainant a Provincial Offences Ticket. You conclude that the officer's actions were:

"...justified and lawful. Further, there is no evidence whatsoever of misconduct on his part. Since there is no misconduct, your complaint does not qualify as such within the meaning of the Act."

The LAKE file (your file #633-10-87) is an allegation of Neglect of Duty. The complainant stated that the officer arrested him without investigating the matter thoroughly and interviewing other witnesses. Apparently, the complainant was subsequently acquitted of the offence with which he was charged. The complaint was investigated for two weeks, and in your letter you state that you were satisfied that the officer conducted a thorough investigation and had ample reasonable and probable grounds to lay the charge. However, instead of concluding that no action was warranted you once again invoked section 13(1)(b).

The CAMPBELL complaint (your file #722-12-87) is a complaint of Unlawful or Unnecessary Exercise of Authority. The complainant alleges that the officer fired his gun and shot him in the left hand and left thigh. Our file contains no report of an investigation by the Public Complaints Investigation Bureau, although your letter to the complainant states that an investigator from the Bureau was assigned and that you "carefully reviewed this investigation and the circumstances which lead to your being shot by Constable Swaddling." You go on to state that (a) the complainant was suffering "some form of psychiatric disorder"; (b) an investigation was conducted into the incident by the Homicide Squad; and (c) the results of the investigation were presented to a Deputy Crown Attorney who "opined that the action taken by the officer was lawful and justified." You go on to say there is no evidence of misconduct and once again invoke section 13(1)(b) instead of finding that no action is warranted.

The CAMPBELL file gives me particular concern both because of the seriousness of the allegation and because this was just the sort of matter which lead to the Metropolitan Toronto Police Force Complaints Act being passed by the Legislature in the first place. It is a serious concern to me that neither the complainant nor this office appear to have received reports of any investigation conducted by the Bureau or the Homicide Squad and that we have received no information on the consultation with the Deputy Crown Attorney whom you mentioned. In my view this approach is in contravention of the purpose and requirements of the legislation.

Obviously, my most serious concerns are in relation to the CAMPBELL file, but all of the above-noted files represent to me a misunderstanding on your part of the law governing your decision-making power under this legislation.

As noted above, I would urge you to reconsider your position regarding these files and any subsequent similar matters. In the event that your view does not change I suggest that we meet formally with the Chief and the Board of Commissioners of Police in order to discuss this issue and resolve it.

I must state with respect that it is my view that your views on section 13(1)(b) represent a departure from both the wording and the spirit of this legislation which requires both of us to perform certain statutory duties properly.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Clare E. Lewis', with a stylized flourish at the end.

CLARE E. LEWIS,
Public Complaints Commissioner.

CEL/pb

C. REQUESTS OF POLICE ASSOCIATION

7. REQUEST THAT ALL CRIMINAL ALLEGATIONS BE HEARD IN A CRIMINAL COURT AND THAT BOARDS OF INQUIRY BE LIMITED TO HEARING COMPLAINTS WHICH DO NOT CONTAIN ALLEGATIONS WHICH COULD AMOUNT TO CRIMINAL CONDUCT

The Ontario Court of Appeal has stated:

"Neither a conviction nor an acquittal before a criminal court on a criminal charge will bar the use of the same conduct before such a tribunal on an application to suspend or expel; for the purpose of the proceeding is not to punish the practitioner for the commission of an offence as such, but to exercise disciplinary power over the members of a profession so as to ensure that their conduct conforms to the standards of the profession." (Re Pelissero v. Loree (1982), 140 D.L.R. (3d) 676 (Div. Ct.) quoted in Trumbley & Pugh v. Metropolitan Toronto Police et al. (1986), 21 Admin. L.R. 232 (Ont.C.A.), upheld on appeal to the Supreme Court of Canada, November 19, 1987, see Vol. 2, Tab 13.)

Allegations of criminal behaviour by a police officer are appropriately the subject of a disciplinary proceeding.*

Reference is made to proceedings by the Law Society:

"It is the policy of the Law Society to proceed with the hearings even though there may be criminal proceedings pending based on the same fact situation. The jurisdiction of the Discipline Committee to proceed in the face of pending criminal charges has been judicially approved." (See: The Disciplinary Process of the Law Society of Upper Canada by D.P. Iggers and J.P. Twohig. See Appendix, Vol. 2, Tab 14, at page 29.)

"The Society's investigative and prosecutorial arms are independent of the police and the crown. The Society frequently commences investigations and prosecutions in matters which have a criminal aspect in advance of criminal proceedings. It is the policy of the Law Society to investigate, seek authorization for a complaint and proceed expeditiously to a hearing whenever a member has been charged with a significant offence." (See Iggers and Twohig, supra, at Vol. 2, Tab. 14.)

*Emphasis Added

If the Chief of Police orders a criminal information to be laid as his judgment on a complaint under subsection 14(1)(a) of the Act then the possibility of a Board of Inquiry is obviated on the same issue pursuant to a request for review by a complainant. However, if the Chief of Police does not act under section 14(1)(a) and does not lay a criminal information, the legislation is designed to provide a fail-safe mechanism which permits the Public Complaints Commissioner to order a Board of Inquiry if it is in the public interest, thereby ensuring that discipline can be imposed if appropriate. This scheme protects the public interest by providing a review when the Chief has not acted and meets the community need to have faith in the integrity of the complaints process. This fail-safe mechanism is a cornerstone of the legislation.

The concept of double jeopardy was addressed by the Metropolitan Toronto Police Association Brief to the Standing Committee on the Administration of Justice. The Brief states that a police officer facing a Board of Inquiry under the complaints legislation should be protected from facing an identical proceeding before a Police Act tribunal. (See Appendix, Vol. 1, Tab 4.) The issue of double jeopardy arising from a parallel criminal charge was not raised.

The intent of the present Association recommendation is to render civilian review applicable only to relatively innocuous police misconduct. It is designed to exempt police from discipline for civilian initiated complaints which include allegations of criminality. Its thrust is to permit discipline only in the rare event of a criminal conviction, and then only by the Chief of Police. The Association fails to recognize, or wishes to deny, the need for discipline for all forms of professional misconduct irrespective of the implementation or consequence of the criminal process.

8. REQUEST THAT THE POLICE ASSOCIATION HAVE THE POWER
TO CHALLENGE THE SELECTION OF A PANEL MEMBER ON A
BOARD OF INQUIRY AT THE TIME THE BOARD IS CONVENED
TO HEAR A CASE

The Metropolitan Toronto Police Force Complaints Act,
1984, requires that appointments to the panel of persons
from which Boards of Inquiry as selected be made by the
Lieutenant Governor in Council as follows:

- (1) One-third who must be members of the Law Society of
Upper Canada shall be appointed on the recommendation of
the Attorney General and the Solicitor General jointly.
- (2) One-third shall be appointed on the recommendation of
the Board of Commissioners of Police and the Police
Association jointly.
- (3) One-third shall be appointed on the recommendation of
the Municipality of Metropolitan Toronto.

In the event that a recommendation is not forthcoming
from a party entitled to recommend, the Attorney General and
the Solicitor General jointly shall recommend persons for
appointment.

The participation of the Police Association and the Board of Commissioners of Police in the selection of one-third of the members ensures that a panel member who is acceptable to the Police Association and the Board of Commissioners of Police is chosen.

It is open to the Police Association to comment to the Lieutenant Governor in Council about its view of the propriety of the appointment of any individual being considered on the recommendation of one of the three groups. This opportunity is an appropriate and timely one for general objection.

It is always open to counsel on behalf of a party before a Board of Inquiry to raise and argue an allegation of bias against a member of that Board. If there is evidence of bias counsel can take the appropriate steps.

9. REQUEST THAT THE APPEAL ROUTE AVAILABLE TO A
POLICE OFFICER FOUND GUILTY AT A BOARD OF INQUIRY
OR A POLICE ACT HEARING INCLUDE A HEARING DE NOVO
BEFORE THE BOARD OF COMMISSIONERS OF POLICE OR THE
ONTARIO POLICE COMMISSION

The request that there should be an intermediate de novo appeal to the Board of Commissioners of Police and/or to the Ontario Police Commission should be considered in light of the following comments of the Maloney Report in 1975 at page 224:

"It will be noted that the effect of these recommendations is to remove the process (with the exception of decisions as to penalty) from any individual or Board in connection with law enforcement, and to place it instead under the jurisdiction of independent bodies. The conclusion should not be drawn that any reflection is being cast upon the ability and integrity of those presently connected with law enforcement agencies or serving on a Board of Police Commissioners. All those charged with the administration of the police force, extending to and including particularly the Chief of Police and carrying over

to include the Board of Commissioners of Police are caught in what can only be termed as inevitable conflict of interest position insofar as citizen complaints are concerned. A chief of police is called upon to motivate his men, back them up in their fight against crime and defend them against public criticism. So also are Boards of Commissioners of Police required to protect the efficiency, morale and legal liability of the force. In this context, it may be seen as an impossible task for the Chief or his designate or the Board of Commissioners of Police to always fairly adjudicate upon a citizen's criticism of the force, and even where this is impartially done, it will not be seen to be the case."* (See Appendix, Vol. 3.)

The Police Association was of the view, as early as 1976, that recourse to police management as the appellant body in discipline matters put its members at the mercy of the employer. In a joint submission by the Metropolitan Toronto Police Association and the Canadian Civil Liberties Association to the Solicitor General of Ontario, it was submitted:

*Emphasis Added

"In Ontario today, police officers do not have the minimum kind of job security enjoyed by most unionized employees. Constables are not entitled, as of right, to outside arbitration of their discipline and discharge grievances. If a police officer wishes to challenge the discipline which has been imposed upon him, he is virtually confined to appeals within the police structure -- first to a municipal police commission or committee and ultimately to the Ontario Police Commission. In view of the O.P.C. role in police management, it can hardly be regarded as independent of police management. And the municipal commissions and committees, of course, are police management. Thus, where most unionized employees can appeal disciplinary action to independent arbitration, police officers are at the mercy of their employers and those who share their employers' interest."* (At page 3 of the Joint Submission, see Appendix, Vol. 2.)

Metropolitan Toronto police officers enjoy a right of appeal to the Divisional Court of Ontario on any question

*Emphasis Added

is not a question of fact alone or from a penalty imposed by a Board of Inquiry or on both the question and penalty under subsection 23(17) of the Act. They are not restricted merely to judicial review of the process of the Board of Inquiry.

The recent appeal by Terrence Weller to Divisional Court, and to the Court of Appeal on an application for leave to appeal (which was refused) is an excellent example of the considerable appellate rights of a Metropolitan Toronto police officer from a decision of the Board of Inquiry. These rights clearly take into account Police Association concerns as expressed in 1976.

Losing in Appellate Court is not an appropriate ground for changing the appellate framework. Appeal from a Board of Inquiry to a Police Commission would be a regressive step and not in the best interest of police officers or the public.

10. REQUEST THAT THE ROLE OF COUNSEL ON BEHALF OF THE
ATTORNEY GENERAL BE LIMITED SO THAT IT IS NEITHER
PROSECUTORIAL NOR ADVERSARIAL

The position of the Attorney General on this issue is fully explained in the attached correspondence between him and Professor E. Ratushny of the University of Ottawa.

January 20, 1987

The Honourable Ian Scott
Attorney General of Ontario
18 King Street East
Toronto, Ontario
M5C 1C5

Dear Ian:

Re: Metropolitan Police Force
Complaints Project Act

I have had occasion to examine this legislation recently and note that when a board of inquiry is established pursuant to section 23:

(4) The Attorney General, where he is a party to the hearing, has carriage of the matter.

I would interpret this to mean that counsel for the Attorney General would adduce evidence and present argument with a view to establishing misconduct "beyond a reasonable doubt". I would normally expect such counsel to cross-examine the officer against whom misconduct is alleged or other witnesses called by such officer.

In other words, I would envision that counsel would assume an essentially adversary role similar to that of Crown counsel who have "carriage of the complaint" on behalf of the Commission pursuant to section 38(2)(a) of the Ontario Human Rights Code.

However, I learned from members of a recent board of inquiry under the M.P.F.C.P.A. that counsel for the Attorney General in that case assumed a rather passive role, calling witnesses both favourable and unfavourable to the complainant and, as a result, not challenging any evidence favourable to the officer. The complainant, who is not required by the legislation to be a party, was not represented by counsel.

...2

Would you be kind enough to clarify for me your instructions to counsel as to the role which they should assume before such boards of inquiry. It may be that the case in question was simply an aberration but it is difficult to see how proof beyond a reasonable doubt of misconduct could be established in such circumstances except in the most blatant cases.

With best wishes.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Ed R.' with a stylized flourish at the end.

Ed Ratushny
Professor of Law

/fr



Office of the
Minister

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du Ministre

Ministry of
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February 16, 1987

Professor Ed Ratushny
Professor of Law
Faculty of Law
Common Law Section
University of Ottawa
57 Copernicus
Ottawa, Ontario
K1N 6N5

Dear Professor Ratushny:

We acknowledge receipt of your letter of January 20, 1987 concerning the role of counsel who appear on behalf of the Attorney General before Boards of Inquiry convened under the Metropolitan Toronto Police Force Complaints Act. Some of the comments in your letter surprise us. Counsel from this office consider appearing before these boards an important aspect of their duties. We have given carriage of these cases to experienced Crown Counsel. All indications we have received from the Public Complaints Commissioner and his staff with respect to the quality of our representation have been favourable.

While there are a number of ongoing cases over which counsel from this office have carriage, only one completed hearing has taken place in which Crown Counsel was involved. Enclosed herewith please find a copy of the Board of Inquiry Decision in this case. As you can see, the hearing took place over five days. The reasons for the Decision disclose that all relevant issues were thoroughly canvassed. We are advised that all evidence considered to be significant by the investigator from the Public Complaints Commission was tendered. The complainant asked no questions of the important witnesses and was content to rely on the summation of the case by Crown Counsel. The complainant did not tender evidence in addition to that called by Crown Counsel, except with respect to an incident occurring prior to the alleged police misconduct which was considered by Crown Counsel to be of little probative value and cast the complainant in a bad light.

Professor Ed Ratushny
February 16, 1987
Page 2

Crown Counsel did consider it his duty to place before the Board all relevant evidence whether favourable or unfavourable to the complainant. However, the witnesses who supported the position of the subject officer were vigorously questioned by Crown Counsel and the Board's findings of credibility with respect to one police officer in particular reflect the effect of that questioning. The subject officer exercised his right not to testify and, accordingly, was not available for cross-examination. In the end result, the Board's Decision was based on findings of credibility and the onus of proof required by the legislation.

We are concerned that some of the comments made to you by Board members disclose a basic misunderstanding of the role of Crown Counsel. As you know, in Boucher v. The Queen (1955), S.C.R. 16 the Supreme Court of Canada clearly articulated the precepts which should guide Crown Counsel:

"It is quite true that counsel for the prosecution throughout a case ought not to struggle for the verdict against a prisoner but they ought to bear themselves rather in the character of ministers of justice assisting in the administration of justice."

In performing this role, Crown Counsel is obliged to bring before the tribunal all material witnesses (Lemay v. The King (1952), 15 C.R. 232).

While these principles were declared in criminal cases, they are no less important when counsel for the Attorney General assumes carriage of a case before a Board of Inquiry. In his classic work, The Law Officers of the Crown, Prof. Edwards affirms, at p.297, that the Attorney General's duty in such circumstances lays in "impartially assisting the Commission by examining witnesses with the sole object of establishing the truth" [emphasis added].

In your letter, you make reference to hearings held pursuant to the Ontario Human Rights Code. It is

Professor Ed Ratushny
February 16, 1987
Page 3

important to recognize that there are significant differences between hearings under that legislation and those held pursuant to the Metropolitan Toronto Police Force Complaints Act. For instance, the Attorney General is not a party to proceedings under the Human Rights Code and he does not have carriage of the matter. Section 38(2) of the Human Rights Code states that the Commission has carriage of the complaint. It is true that counsel from the Ministry of the Attorney General do act as counsel for the Commission, but when they do so they are not appearing in the place of the Attorney General.

In your letter, you also make reference to the fact that the complainant is not required by the Metropolitan Toronto Police Force Complaints Act to be a party to the hearing. However, the Statutory Powers Procedure Act makes it clear that the complainant is entitled to be a party. Indeed, the Regulations to the Metropolitan Toronto Police Force Complaints Act prescribe that the form setting out procedures under the Act, which is furnished to the complainant pursuant to s.6(2), state:

"If a Police Complaints Board hearing is ordered, you will be notified in writing of the date and place of the hearing. You have a right to attend and take part in the hearing and to be represented by counsel or an agent."
[Emphasis Added]

It is clear, therefore, that the legislative scheme does not contemplate counsel for the Attorney General acting on behalf of the complainant.

Section 19(3) of the Metropolitan Toronto Police Force Complaints Act requires the Commissioner to order a hearing by a board of inquiry if he believes that, in the public interest, such a hearing is required. We agree with Prof. Edwards that it is the duty of counsel for the Attorney General at hearings of this nature to fulfil their duty of representing the public interest "conscientiously, impartially and vigorously".

Professor Ed Ratushny
February 16, 1987
Page 4

There may well be cases in which counsel for the Attorney General is required to vigorously challenge the evidence of the subject officer. Enclosed herewith is a newspaper report of such a case. It may also be necessary, where the complainant is unrepresented, for counsel for the Attorney General to take a more active role in presenting the position of the complainant. However, the paramount obligation of Crown Counsel is to ensure that all relevant evidence is placed before the board of inquiry so that the truth of the complaint can be established.

Thanking you for bringing this matter to our attention, I remain

Yours very truly,

IAN SCOTT
Attorney General

Enclosures

cc: ✓ Mr. Clare E. Lewis
Public Complaints Commissioner



UNIVERSITÉ D'OTTAWA
UNIVERSITY OF OTTAWA

FACULTÉ DE DROIT
FACULTY OF LAW

March 19, 1987

The Honourable Ian Scott
Attorney General of Ontario
18 King Street East
Toronto, Ontario
M5C 1C5

Dear Ian:

Re: Metropolitan Toronto Police
Force Complaints Project Act

I was, in turn, surprised by the tone of your reply of February 16. I have never suggested that Crown counsel do not consider appearing before these boards to be important. Nor have I suggested that these cases are given to inexperienced counsel. I made no suggestion as to the quality of their representation.

My inquiry was merely to ascertain what role Crown counsel consider to be appropriate for themselves in these hearings.

First of all, I assume from your letter that there are no special instructions for counsel as to the conduct of these hearings. Is this correct?

I also gather that you would envision Crown counsel calling witnesses both favourable and unfavourable to the subject officer. However, you then suggest that the Crown would proceed to cross-examine his/her own witness. Do I understand you correctly?

In a criminal case, the Crown would be more likely to let witnesses favourable to the accused be called by the defence so that they would be available for cross-examination by the Crown. If a witness favourable to the defence is known by the Crown but not the defence, I am of the view that Crown counsel will have done his/her duty simply by informing defence counsel of the witness. I do not believe the duty extends further to require the Crown actually to call such a witness. Why would you not simply follow the same practice at these boards of inquiry?

...2

With respect to the appropriate role of Crown counsel in criminal cases, you might find the enclosed passage from my book on self-incrimination to be of interest. The senior Crown Attorney in question was from Ontario.

You mention that it is important to recognize that there are significant differences between hearings under the M.T.P.F.C. Act and the Human Rights Code. Could you explain what that significance is in the context of our discussion? In other words, what differences would you see in the manner in which counsel for the Attorney General and the Human Rights Commission, respectively, would actually conduct themselves at these hearings?

I did not suggest that the legislative scheme contemplated counsel for the Attorney General acting on behalf of the complainant.

I would view complaints which are the subject of boards of inquiry to transcend the interests of the complainant. Such complaints are a matter of public concern as are criminal offences and prohibited discrimination. My concern is that unless Crown counsel take an adversary approach, proof beyond a reasonable doubt often will be difficult to achieve and confidence in the process will be difficult to maintain.

Cheers!

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Ed' with a stylized flourish.

Ed Ratushny, Q.C.
Professor of Law

/fr

cc: Clare Lewis
Office of the Public
Complaints Commissioner

cases are disposed of through guilty pleas. In these situations, the accused recognizes (one would hope, with the assistance of counsel's advice) that the Crown will have no trouble in establishing its case. The important consideration is that the full procedural protections are present and available to any accused who wishes to invoke them. In this context, an important role for defence counsel will often be to ensure that the accused pleads guilty to the correct offence in the circumstances. It may well be, for example, that the Crown has charged the accused with an offence which is more serious than that which the circumstances or the proof available to the Crown would warrant. Defence counsel will often attempt, through informal discussion, to have the more serious charge reduced. However, if he is unsuccessful, it is open to the accused to put the Crown to the strict proof of its allegation.

There are occasional references to Crown counsel as some sort of impartial figure who "neither wins nor loses". The suggestion is that the Crown makes its entire case available to the defence prior to trial and, at the trial, simply presents its evidence together with all evidence which might be favourable to the accused. In an often-quoted passage from his testimony before a Parliamentary Committee, W.B. Common, Q.C., then Director of Public Prosecutions for the Province of Ontario said:

[T]here is nothing hidden or kept back or suppressed so that the accused person is taken by surprise at a trial by springing a surprise witness on him. In other words, I again emphasize the fact that every safeguard is provided by the Crown to ensure that an accused person . . . in every case receives and is assured of a fair and legal trial.³⁴

While the practice varies from province to province and from city to city and town in Canada, it is probably safe, generally, to portray Crown counsel as far more of an adversary than this passage would suggest. One senior Crown Attorney has responded privately to Mr. Common's statement in the following rather colourful terms:

I can simply say that I do not agree with Mr. Common. I have great admiration for him and he is a splendid lawyer, however, I think Mr. Common, by virtue of the nature of his work with the Department of Justice, was viewing the swirl

34. As quoted by G. Martin, "Preliminary Hearings", in the Law Society of Upper Canada *Special Lectures: Evidence* (1955) p. 3. See also *R. v. Finland* (1959), 31 C.R. 364 (B.C. S.C.).

of battle from the high parapets and was not familiar with the in-fighting that takes place in the fox-holes and the slit-trenches.³⁵

This reality, visible in most of our criminal courts every day, is also confirmed in the reported cases containing examples of excessive language in Crown addresses to the jury and other manifestations of the adversary role. The point is simply that the Crown is usually every bit as much an adversary as defence counsel (although a difference in emphasis will normally exist because of the Crown's primary role to establish a case and the defence's usual primary role to attempt to destroy the Crown's case).

The final role in this adversary setting is that of the judge or the judge and jury. The emphasis in our system upon the accusation and the proof of that accusation by the state, requires that there be an independent adjudication. It would be unfair to the accused for the state to make the accusation and also to make the determination as to its accuracy. Therefore, the adjudication is made by an independent institution which must meticulously separate itself from the making of the accusation as well as the proving of it.

Once the emphasis is placed upon the accusation by the state, many other features of the adversary system flow rather naturally from it: the need for a specific charge, the presentation of the Crown case first, the right simply to attack the Crown case and to cross-examine Crown witnesses, the right to present counter-proof, the need for an independent adjudication, and so on.

This whole "adversary" approach can be contrasted with an "inquisitorial" approach, where the emphasis shifts from an accusation to the terms of reference of the inquiry. For example, instead of an accusation that X is criminally responsible for the murder of Y, the inquiry might be into the circumstances surrounding the cause of Y's death. The inquiry might even be to determine specifically whether or not X is criminally responsible for the death of Y. However, an inquiry suggests an initiative on the part of the adjudicator. The passive judicial role is no longer possible. The adjudicator becomes an investigator as well as a judge.

In these circumstances, the crucial burden on the Crown to prove its accusation no longer exists. Rather than the Crown having

35. Personal correspondence.



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May 28, 1987

Professor Ed Ratushny, Q.C.
Professor of Law
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Dear Professor Ratushny:

**Re: Metropolitan Toronto Police
Force Complaints Project Act**

Thank you for your letter of March 19, 1987. We regret the delay in our reply, but we thought that you would be interested in the decisions reached by the boards of inquiry in the two cases which were ongoing when you wrote and these decisions were only recently released. They are enclosed herewith. The three officers involved in the two cases were all found guilty of misconduct.

As your questions suggest, the role of counsel for the Attorney General in these hearings is not always an easy one. However, we have not found it necessary to issue to counsel special instructions as to the conduct of these hearings.

We do consider it the duty of counsel for the Attorney General to place before the board of inquiry all evidence that will assist in establishing the truth of the complaint. As you can appreciate, this often necessitates calling witnesses whose evidence is, at least in part, "favourable" to the subject officer. For example, an important piece of evidence, often supporting the complainant, is the fact that a complaint was made to another police officer shortly after the incident. These officers are called by counsel for the Attorney General to confirm whether a complaint was made. They are not always the most willing of witnesses. They often give additional evidence "favourable" to the subject officer. If the witness does have a bias, it is in the interests of justice for counsel for the Attorney General to bring this out during his or her examination of the witness. It has

been the experience of our counsel that boards usually permit counsel some latitude in questioning, as long as the questions are relevant and assist in establishing the truth.

Thank you for drawing to our attention the excerpt from your book. It is our view that Mr. Common was correct in stating that Crown counsel should strive to ensure that an accused person "in every case receives and is assured of a fair and legal trial". This goal is not incompatible with a vigorous and effective prosecution. It is no doubt true, as the senior Crown Attorney and some reported cases (see R. v. Logiaccio (1984), 11 C.C.C. (3d) 374 (Ont. C.A.) indicate, that this goal is not always attained. This fact does not diminish its importance.

With respect to the differences between the role of counsel for the Ontario Human Rights Commission and counsel for the Attorney General, we note that s.15(3) of the Ontario Human Rights Code provides that the Commission may initiate a complaint where the Commission "has reason to believe" that a contravention of the Code has occurred. In such circumstances, it is the role of counsel for the Commission to prove that the contravention occurred. On the other hand, the M.T.P.F.C.A. provides that the Commissioner is to order a board hearing where one is required in the public interest. The role of counsel for the Attorney General is to assist the board in establishing the truth of the complaint.

We are in total agreement with you that complaints which are the subject of boards of inquiry transcend the interests of the complainant. Allegations of misconduct by police officers are a matter of public concern. As is the process by which these allegations are investigated and adjudicated upon. It has been our experience that justice can be done in these cases by counsel for the Attorney General exercising the traditional role of the Attorney General's representative.

In closing, we regret that our letter of February 16 may have left you with the impression that we do not value your observations and questions. It is of the utmost assistance to us to receive the benefit of your expertise and we sincerely hope that you will not hesitate in the future in advising us of your views on these important matters of public concern.

Yours very truly,

IAN SCOTT
Attorney General

cc: ✓ Mr. Claire Lewis
Office of the Public Complaints Commission

JUL 10 1987



UNIVERSITÉ D'OTTAWA
UNIVERSITY OF OTTAWA

FACULTÉ DE DROIT
FACULTY OF LAW

July 3, 1987

The Honourable Ian Scott
Attorney General of Ontario
18 King Street East
Toronto, Ontario
M5C 1C5

Dear Ian:

Re: Metropolitan Toronto Police
Force Complaints Project Act

Thank you for your detailed letter dated May 28 pursuant to our earlier correspondence.

I gather that, essentially, you do envision Crown counsel taking an adversary role in these proceedings and I certainly consider that to be the correct approach. That would suggest that the case referred to in my original letter was probably a bit of an aberration.

I also appreciated receiving the Board of Inquiry decisions in the Morrow and Perdon complaints. I have been quite impressed by the calibre of many of the people whom you have appointed to the panel for conducting these hearings.

The last paragraph of your letter was generous. Although I have not hesitated to be critical on specific issues over the last two years, your record of achievement since assuming office has been truly remarkable. I have admired your courage in pressing forward on issues which have a high "irritation" potential for voters. The equal pay legislation is an excellent example and you are to be congratulated for your tenacity in seeing this matter through.

All the best.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'Ed Ratushny'.

Ed Ratushny
Professor of Law

/fr

COMMON LAW

57 COPERNICUS, OTTAWA, ONTARIO, CANADA K1N 6N5

11. REQUEST THAT A BAN ON PUBLICATION BE IMPOSED ON
BOARD OF INQUIRY HEARINGS

Board of Inquiry hearings are subject to the provisions of the Statutory Powers Procedure Act. Section 9(1) of the Statutory Powers Procedure Act empowers a tribunal to hold a hearing in camera when the matter involves "public security" or "intimate, financial or personal matters."

The Maloney Report at page 222 states:

"The trial tribunal may make an order, or on the request of either the citizen or the police officer or on its own initiative, direct that the evidence taken at the hearing shall not be published in any newspaper or broadcast until after the hearing of the complaint has been terminated and judgment therein has been rendered by the trial tribunal." (See Vol. 3)

Mayor Eggleton, in his submission to the Standing Committee on Administration of Justice on September 23, 1981, stated:

"The responsible reporting of the news media has tended to ensure fair trials and has enured to the public good. Importantly, it has assisted to establish confidence in the public that in Canadian courtrooms justice is indeed done."

Current views of disciplinary hearings and Charter decisions, are tending to full public and media access as being necessary in the public interest. The confidence of the public in the complaints process of the Metro Toronto police requires openness and awareness of their disciplinary hearings in the matter of public complaints. The police force itself recently recognized this value in its own internal disciplinary hearing in the matter of Constable David Packer, an officer who refused duty outside the Morgentaler Clinic. That hearing was broadly publicized. The public was present and the media reported, in detail, each day of the proceedings.

Banning publication of proceedings until the completion of the hearing, and then only in the event of conviction would strike at the root of public confidence by making it difficult to ensure whether acquittals or convictions were appropriate. It is equally important for the police to be seen publicly to have acted properly in cases in which acquittals are granted.

Reference is made to the recent decision of the Ontario Divisional Court dated November 27, 1986, in Canadian Newspapers Company Ltd. et al. v. The Law Society of Upper Canada And a Solicitor (1986), 19 O.A.C. 361, which stated that:

"Section 23(1) of the S.P.P.A. which permits a tribunal to make such orders as it considers proper to prevent abuse of its process, does not authorize the making of an order prohibiting publication, pending final disposition, of a discipline hearing which is being held in public." (See Appendix, Vol. 2, Tab 16.)

12. REQUEST THAT MAJOR AND MINOR OFFENCES SHOULD BE
STATUTORILY DEFINED

The Police Act does not define major or minor offences.

Generally, all allegations of misconduct may be categorized as either major or minor. However, it is not possible to anticipate all fact situations which may give rise to an allegation of misconduct. It is not appropriate to limit the discretion of the Chief of Police or the Public Complaints Commissioner by strictly defining offences as major or minor. Such a clarification may, in fact, result in an unfairness to a police officer.

Many incivility complaints may be classified as minor. However, incivility with racial overtones may be a major offence. Other examples of the difficulty of prior definitions abound.

Paul Walter in his submissions to the Standing Committee on the Administration of Justice, September 22, 1981, expressed the Police Association's concerns with regard to the clarification of major and minor offences. He stated:

Mr. Walter: "It may be a hell of a chore to define what really is a major offence and what is a minor offence, what would go to a three-person tribunal as opposed to being adjudicated by one individual. Those complaints that would normally be major could not be resolved informally with a handshake but would, in fact, have to be proceeded to and be received by the Public Complaints Commissioner. The minor offences or the minor allegations themselves could be resolved informally and maybe they would have to be spelled out."
(See Appendix, Vol. 1, Tab 2.)

The Police Association's request for the defining of major and minor offences is a prelude to the Association taking the position that a subject officer should only give statements to superior officers in allegations defined as minor and not in allegations defined as major. The Association will then demand that only minor offences be heard by Boards of Inquiry.

The first position would directly contradict both the Police Act and Administrative Procedure No. 12 of the Metropolitan Toronto Police Force (See Appendix, Vol. 2, Tab 18.) The second position would effectively emasculate the public complaints legislation.

13. REQUEST THAT "BILL OF RIGHTS FOR POLICE OFFICERS"
BE INCLUDED AS A SCHEDULE TO THE METROPOLITAN
TORONTO POLICE FORCE COMPLAINTS ACT, 1984

The Act does not, when considered in conjunction with Administrative Procedure #12 of the Metropolitan Toronto Police Force, derogate from the rights of a police officer. (See Administrative Procedure No. 12, Appendix, Vol. 2, Tab 18.)

The Board of Commissioners of Police proclaimed the Bill of Rights for Metropolitan Toronto police officers on June 3, 1982. The "Bill of Rights for Police Officers" is set out as follows: (and see Appendix, Vol. 2, Tab 17.)

(A) AN OFFICER AGAINST WHOM A COMPLAINT IS RECEIVED SHALL BE ADVISED OF THE SUBSTANCE OF THE COMPLAINT AS SOON AS POSSIBLE. THE ONLY JUSTIFIED REASON FOR DELAY IS IF IT WOULD JEOPARDIZE THE CONDUCT OF THE INVESTIGATION."

This protection is secured by section 9 of the Metropolitan Toronto Police Force Complaints Act, 1984, which provides that:

9. The person in charge of the Bureau shall inform forthwith the subject officer of the substance of the complaint in the prescribed form, unless, in the opinion of such person, to do so might adversely affect any investigation of the complaint.

(B) "EACH OFFICER SHALL BE ADVISED OF THE STATUS OF THE COMPLAINT WITHIN 30 DAYS OF ITS RECEPTION AND SHALL BE PROVIDED WITH INTERIM REPORTS AS PRESCRIBED. HE SHALL BE PROVIDED WITH THE FINAL INVESTIGATION REPORT WHEN IT IS COMPLETED."

This procedure is secured by sections 11(2) and (4) of the Act which provide:

11.(2) The person in charge of the Bureau shall forward to the Commissioner, the complainant

and the subject officer an interim report in the prescribed form providing a summary of the investigation to date not later than 30 days after receipt of the complaint and shall forward further interim reports to the same persons on a monthly basis during the course of the investigation.

(4) Where an investigation has been completed, the person in charge of the Bureau shall cause a final investigation report in the prescribed form to be prepared and shall forward a copy thereof to the Commissioner, the Chief of Police, the complainant and the subject officer.

(C) "THE POLICE OFFICER CONCERNED SHALL NOT BE REQUIRED TO GIVE EVIDENCE AT A DISCIPLINARY HEARING NOR SHALL ANY STATEMENT OR ANSWER REQUIRED TO BE GIVEN BY HIM IN RESPECT OF THE COMPLAINT MADE AGAINST HIM BE ADMITTED IN EVIDENCE AT THE HEARING EXCEPT WITH HIS CONSENT."

These protections are secured by section 23(13) of the Act which provides:

23.(13) Notwithstanding section 12 of the Statutory Powers Procedure Act, the subject officer shall not be required to give evidence at the hearing nor shall any statement or answer required to be given by him in respect of the complaint made against him be admitted in evidence at the hearing, except with his consent.

(D) "NO REFERENCE TO A DISCIPLINARY HEARING SHALL BE MADE IN THE PERSONAL RECORD OF THE POLICE OFFICER CONCERNED UNLESS THE HEARING BODY HAS MADE A FINDING OF MISCONDUCT BY THE POLICE OFFICER."

This protection is secured by section 23(19) of the Act which provides:

23.(19) No reference to a hearing conducted by the Boards shall be made in the personal record of the subject officer unless the Board has made a finding of misconduct.

(E) "NO REFERENCE SHALL BE MADE IN THE PERSONAL RECORD OF A POLICE OFFICER TO A COMPLAINT RESOLVED INFORMALLY."

This protection is secured by section 10(8) and section 23(14) of the Act which provides:

10.(8) No reference shall be made in the personal record of a subject officer to a complaint resolved under this section, except where misconduct has been admitted by the subject officer.

23.(14) Where the person in charge of the Bureau or the Commissioner attempts to resolve a complaint informally and the complaint is not so resolved, any statement or admission made during such an attempt by the subject officer or by the complainant shall not be admitted into evidence at the hearing, except with the consent of the subject officer or the complainant, as the case may be.

(F) "STATEMENTS OBTAINED IN THE COURSE OF THE INVESTIGATION INTO A CITIZEN'S COMPLAINT SHALL ONLY BE ADMISSIBLE ON A HEARING UNDER THE METROPOLITAN TORONTO POLICE FORCE COMPLAINTS ACT, 1984 OR THE POLICE ACT AND NOT IN ANY CIVIL SUIT OR PROCEEDING."

This protection is secured by section 26(3) of the Act which provides:

26.(3) No record, report, writing or document arising out of a complaint is admissible or may be used in any civil suit or proceeding, except at a hearing under this Act or in a disciplinary proceeding under the Police Act and the regulations thereunder.

(G) "OFFICERS AGAINST WHOM COMPLAINTS HAVE BEEN MADE HAVE A RIGHT TO AN ASSOCIATION REPRESENTATIVE BEING PRESENT DURING ANY INVESTIGATION OF THESE OFFICERS."

Association representatives are always permitted the opportunity to advise a subject officer and to be present during questioning as is the norm in labour disciplinary inquiries.

(H) "OFFICERS AGAINST WHOM COMPLAINTS HAVE BEEN MADE HAVE A RIGHT TO COUNSEL, ASSOCIATION REPRESENTATION OR OTHER AGENT DURING ANY HEARING THAT RESULTS FROM THAT INVESTIGATION."

This protection is secured by section 10(a) of the Statutory Powers Procedure Act which provides:

10.(a) A party to proceedings may, at a hearing, be represented by counsel or an agent.

..

(I) "ALL ALLEGATIONS AGAINST POLICE OFFICERS RISING OUT OF CITIZEN COMPLAINTS MUST BE PROVEN BEYOND A REASONABLE DOUBT."

This protection is secured by section 23(15) of the Act which provides:

23.(15) No finding of misconduct by the subject officer shall be made unless the misconduct is proved beyond a reasonable doubt.

(J) "THE POLICE OFFICER SHALL BE AFFORDED AN OPPORTUNITY TO EXAMINE BEFORE THE HEARING ANY WRITTEN OR DOCUMENTARY EVIDENCE THAT WILL BE PRODUCED OR ANY REPORT THE CONTENTS OF WHICH WILL BE GIVEN IN EVIDENCE AT THE HEARING."

This protection is secured by section 23(6) of the Act which provides:

23.(6) "The subject officer and the complainant shall be afforded an opportunity to examine before the hearing any physical or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(K) "OFFICERS SHALL BE ADVISED IN WRITING OF THE FINDINGS MADE ON HEARINGS INTO COMPLAINTS AGAINST THEM AND OF THE AVENUES OF APPEAL OPEN TO THEM WHERE A COMPLAINT HAS BEEN FOUND TO BE ESTABLISHED."

The first of these protections is secured by section 23(18) of the Act which provides:

23.(18) The board will give forthwith written notice of its decision and the reasons therefor to the Chief of Police, the complainant, the subject officer, the Commissioner, the Solicitor General and the Attorney General.

The Act further provides:

24.(1) A party to a hearing by a board may appeal within thirty days of the decision of the Board to the Divisional Court.

Since every adverse decision of a Board of Inquiry has been appealed to the Divisional Court, it appears that the rights and means of appeal well known to all police officers.

(L) "NO NOTATION SHALL BE MADE ON ANY OFFICER'S PERSONAL RECORD REGARDING A COMPLAINT UNLESS THAT COMPLAINT IS ESTABLISHED IN ACCORDANCE WITH THE PRINCIPLES OF NATURAL JUSTICE."

This protection is provided by section 8(4), section 10(8) and section 23(19) of the Act.

8.(4) No reference shall be made in the personal record of any police officer to an inquiry resolved in accordance with subsection (2).

10.(8) No reference shall be made in the personal record of a subject officer to a complaint resolved under this section, except where misconduct has been admitted by the subject officer.

23.(19) No reference to a hearing conducted by the Board shall be made in the personal record of the subject officer unless the Board has made a finding of misconduct.

(M) "NO SUMMARY DISCIPLINE SHALL BE METED OUT TO AN OFFICER WITH RESPECT TO A COMPLAINT UNLESS THAT COMPLAINT IS ESTABLISHED IN ACCORDANCE WITH THE PRINCIPLES OF NATURAL JUSTICE."

The procedural protections and the standard of required

proof set out in the Act ensure that an officer is not disciplined except in accordance with the rules of natural justice. Specifically, in regard to summary discipline, the Act provides in subsection 14(1)(d), (3), (4) and (5) as follows:

14.(1) "The Chief of Police shall review a final investigation report and he may order such further investigation as he considers advisable and may, unless he decides that no action is warranted,

(d) after giving the subject officer ten working days to reply, either orally or in writing, to the complaint, counsel or caution the subject officer regarding his conduct."

14.(3) A subject officer may within thirty days of taking any action under clause (1)(d), request the Commissioner to review the action, in which case all the provisions of this Act relating to a review by the Commissioner shall apply with necessary modifications.

14.(4) Notwithstanding subsection (3), where the Commissioner is satisfied that there are reasonable grounds for granting an extension, the Commissioner may extend the time for requesting a review.

14.(5) Any action under clause (1)(d) shall be expunged from the personal record of the subject officer upon the expiration of a period of two years during which no other disciplinary action has been noted on the record.

The effect of these sections is that an officer dissatisfied with the summary discipline taken by the Chief of Police may seek a review by the Public Complaints Commissioner who may send the matter to a Board of Inquiry where the case must be proved beyond a reasonable doubt and where all procedural protections are provided as aforesaid.

(N) NO OFFICER SHALL BE PERMITTED TO SUFFER DOUBLE JEOPARDY IN ACCORDANCE WITH THE RULE OF LAW. SPECIFICALLY, NO OFFICER SHALL BE REQUIRED TO FACE A DISCIPLINARY CHARGE WHERE THE CONDUCT COMPLAINED OF IS IDENTICAL TO THAT WHICH FORMED THE SUBJECT MATTER OF A PROSECUTION IN THE COURTS THAT RESULTED IN AN ACQUITTAL.

With respect to the statement regarding double jeopardy as set out in the first sentence of this section of the Bill of Rights, all officers are entitled to the same protection afforded by law to any other citizen with respect to issues of res judicata and issue estoppel.

With respect to the balance of this section reference is made to the Supreme Court of Canada decisions in Trumbley and Pugh v. Metropolitan Toronto Police et al., unreported decision released November 19, 1987; and Wigglesworth v. The Queen, unreported decision released November 19, 1987. (See Appendix, Vol. 2, Tab 13.)

It should be noted that a present practice of the Metropolitan Toronto Police Investigation Bureau when a charge has been laid by a citizen against a police officer, and when the charges include matters described in a

complaint, is an attempt to exclude the Office of the Public Complaints Commissioner from monitoring the criminal charge and the investigation of the complaint. This practice is invidious. It permits police use of an outstanding criminal charge to defeat the mandate of the Public Complaints Commissioner -- which is to verify that the police are responsibly investigating and reporting to the complainant. This practice is to be deprecated and must not be permitted to continue.

(O) "WHEREVER A POLICE OFFICER IS SUSPECTED OF OR CHARGED WITH THE COMMISSION OF A CRIMINAL OFFENCE, HE OR SHE SHALL ENJOY EXACTLY THE SAME RIGHTS AS ANY OTHER CITIZEN."

This protection is not within the jurisdiction of the Metropolitan Toronto Police Force Complaints Act, 1984 but is addressed specifically in Administrative Procedure No. 12 of the Metropolitan Toronto Police Force. Officers facing a citizen's complaint which includes an allegation of

criminal conduct are cautioned and are not required to answer. No profession has such a protection in its investigation of a disciplinary offence. (See Administrative Procedure No. 12, Appendix, Vol. 2, Tab 18.)

Otherwise, police officers enjoy all rights of any other citizen suspected of or charged with a criminal offence and are granted specific exceptional defences in the Criminal Code of Canada.

STATUTORY PROVISIONS		POLICE		DOCTORS		LAWYERS	
		Metropolitan Toronto Police Force Complaints Act (MIPFCA)	Police Act (P.A.)	Health Disciplines Act (H.D.A.)	Law Society Act (L.S.A.)		
(1) Full answer and Defence		The Statutory Powers Procedure Act, R.S.O. 1980, c. 484, provides parties with a right to full answer and defence: [s. 10 (b), (c)]. Opportunity to examine evidence: s.23 (6) MIPFCA					
(2) Right to remain silent		The SPPA empowers a tribunal to summons any person to give evidence: [s.12 SPPA.] BUT: s. 23(13) of the MIPFCA gives a subject officer the right to remain silent				s.18(1)L.S.A. Regs. requires a member to cooperate	
(3) Right to Counsel		The Statutory Powers Procedure Act gives all parties a Right to Counsel: [s.10 (a).]					
(4) Rules of Evidence		The SPPA sets out what evidence is admissible: (s.15) ss. 23 (14) and 26 (3)(4) of the MIPFCA set out what is not admissible in evidence		Applies civil rules of evidence s.12(6) (H.D.A.)		Applies civil rules of evidence: s.33(9) (L.S.A.)	
(5) Public Hearings		The SPPA requires Hearings to be open to the public unless matters of public security, intimate financial details, or other personal matters would be disclosed: [s.9 (1)]				BUT s.12 (4) of the H.D.A. allows Hearings to be held in camera.	
(6) Burden of proof		Beyond a Reasonable Doubt s23 (15) MIPFCA	Not stated in Act but described as "balance of probabilities" in the Ontario Court of Appeal decision in <u>Trumbley and Pugh</u>		Not stated in Act but described as "balance of probabilities" in practice		Not stated in Act but described as "clear and convincing evidence" in practice
(7) Judges on Panel		No	No		No		No
(8) Direct Imposition of Discipline		Yes	Yes		Yes		Yes

BOARDS BY YEAR

YEAR	TOTAL NUMBER CALLED	NUMBER DISMISSED	NUMBER W/D	POLICE ACT APPEAL	ADJ SINE DIE	PENDING	COMPLAINT SUSTAINED	PENALTY
1982	4	3	-	-	-	-	1	2 weeks without pay
1983	6	3	1	Upheld	-	-	1	2 week suspension - 1 officer Forfeiture 3 days off - 1 officer
1984	10	2	1	-	-	-	7	3 - forfeiture 5 days pay Officer dismissed 1 - 8 day suspension without pay 1 - forfeiture 12 days off 2 - forfeiture 5 days off 30 day suspension 1 - officer directed to resign
1985	6	4	-	-	1	-	1	Reprimand
1986	7	3	1	-	-	-	3	Reprimand 2 - forfeiture 3 days off
1987	7	1	3	-	-	2	1	Reprimand
TOTAL	40	16	6	1	1	2	14	

POLICE COMPLAINTS BOARD HEARINGS

CASE (Board File No.)	PANEL	DATE HEARING CALLED	CALLED BY	DECISION	STATUS	ALLEGATION
Comp: Noble S.O.: McKay (001)	Sopinka, Santos, Crothers	1982	PCC	Complaint dismissed	Closed	Assault
Comp: Noble S.O.: McKay (002)	Sopinka, Santos, Crothers	1982	PCC	Complaint substantiated 2 weeks without pay	Appeal dismissed	Assault
Comp: Jones S.O.: Lambert (003)	Grosman, Nusca, Rumball	1982	PCC	Complaint dismissed	Closed	Assault
Comp: Tennyson S.O.: Wark (004)	Barrett, Archer, McLennon	1982	PCC	Complaint dismissed	Closed	Assault
Comp: Macfarlane S.O.: Christiano (005)	Sigurdson, Levy, Westaway	1983	P.O. Appeal	Appeal dismissed, penalty of police tribunal affirmed	Closed	Deceit
Comp: Tangredi S.O.: Boytchuk (006)	Makuch	1983	PCC	Complaint dismissed	Closed	Assault
Comp: Bobb S.O.: Nicholls (007)	Barrett, Hong, Singh	1983	PCC	Complaint dismissed	Closed	Failure to take complaint
Comp: Bobb S.O.: Crease (007)	Grosman	1983	PCC	Complaint withdrawn	Closed	Failure to take complaint

CASE (Board File No.)	PANEL	DATE HEARING CALLED	CALLED BY	DECISION	STATUS	ALLEGATION
Comp: Stanwick S.O.: Achilleos S.O.: Milne (008)	O'Connor, Jorgensen, Popowich	1983	PCC	Complaint withdrawn	Closed	Assault
Comp: Smith S.O.: Brown (009)	Sharma, Clements, Cole	1983	PCC	Complaint dismissed	Closed	Assault
Comp: Anderson S.O.: Kellock (010)	Barrett, Jorgensen, Crothers	1984	PCC	Complaint substantiated, 5 days - forfeiture pay	Closed	Assault
Comp: Thomas S.O.: Packer (011)	Sigurdson	1984	Police	Complaint withdrawn	Closed	Incivility
Comp: Footman S.O.: Evans S.O.: Packer S.O.: Wills S.O.: Madeley (012)	O'Connor, Westaway, McLennan	1984	Police	Complaint re Wills only substantiated, forfeiture - 12 days off	Appeal dismissed	Assault
Comp: Footman S.O.: Davies S.O.: Jolly S.O.: Pawlowski (012)	Sopinka, Santos, Rumball (Chairman Makuch)	1984	Police	Complaint dismissed	Closed	Discreditable conduct
Comp: Herrell S.O.: Simms (013)	Grosman, Levy, Archer	1984	PCC	Complaint dismissed	Closed	Assault

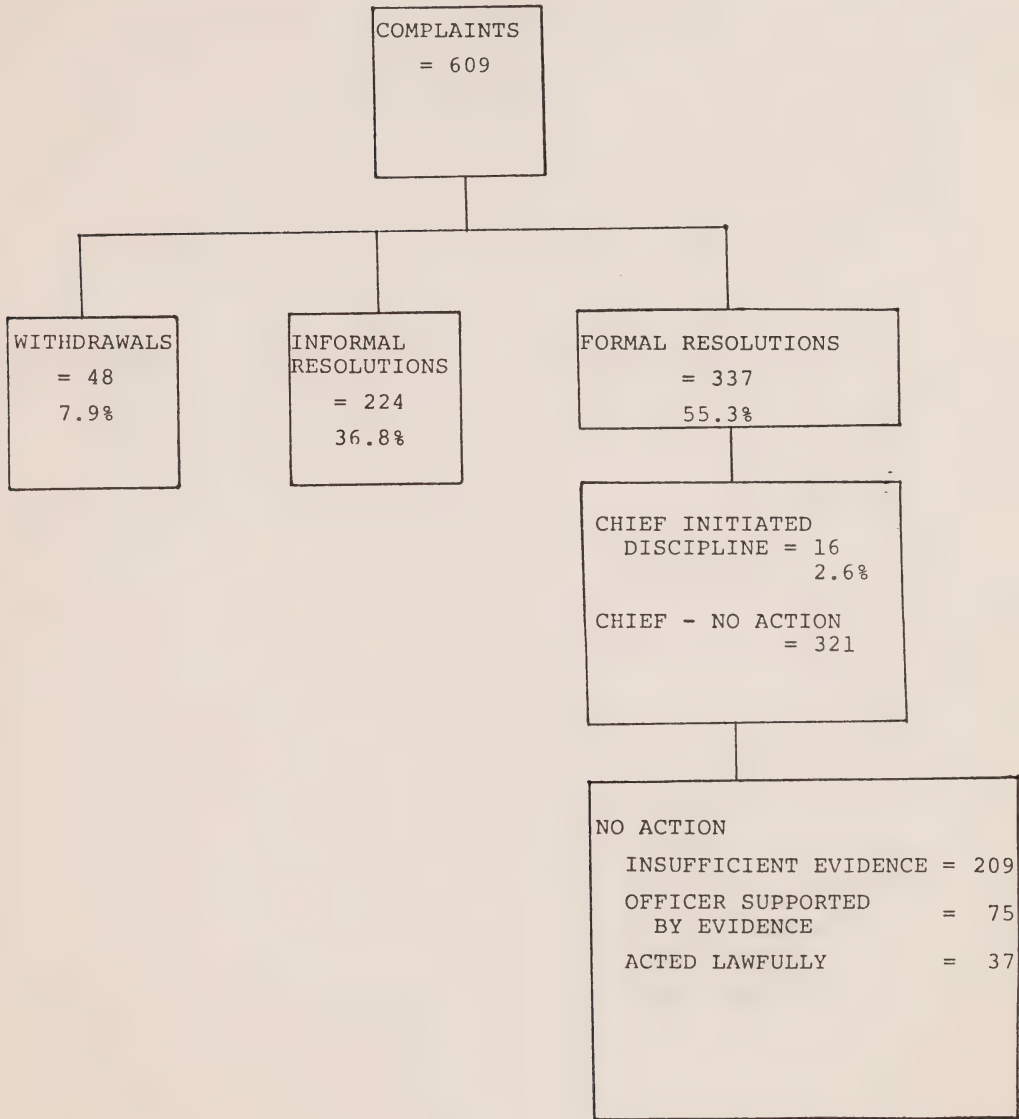
CASE (Board File No.)	PANEL	DATE HEARING CALLED	CALLED BY	DECISION	STATUS	ALLEGATION
Comp: Waugh S.O.: Hodges (014)	Barrett	1984	PCC	Complaint dismissed	Closed	Illegal entry and search
Comp: Nguyen S.O.: Brown S.O.: Smollett (015)	Makuch, Nusca, Clements	1983	PCC	Complaint substantiated, Appeal Brown: 2 wk. suspension dismissed Smollett: forfeiture 3 days off		Assault
Comp: Yuen S.O.: Fiume S.O.: Cornwall (016)	Searles, Singh Levy	1984	PCC	Complaint substantiated, Closed Fiume: 30 day suspension without pay Cornwall: 5 days forfeiture pay		Assault
NOTE: Both officers resigned during hearing						
Comp: Hendry S.O.: Giancola S.O.: Vetere (017)	Sigurdson, Hong, Crothers	1984	Police	Complaint substantiated, Giancola appeal upheld Giancola: forfeiture 5 days off Vetere: dismissed		Assault
Comp: Smith S.O.: Murdock (018)	Grosman, Popowich, McLennon	1984	PCC	Complaint substantiated, Appeal upheld Assault forfeiture 5 days off, Murdock appeal forfeiture 5 days pay		
Comp: Neely S.O.: Weller (019)	Barrett, Clements, Santos	1984	PCC	Complaint substantiated, Weller appeal directed to resign within 7 days	dismissed	Assault
Comp: Gojdos S.O.: Cooper (020)	Barrett, Westaway, Jorgensen	1984	PCC	Complaint substantiated, Cooper appeal 8 days suspension without pay	pending	Assault

CASE (Board File No.)	PANEL	DATE HEARING CALLED	CALLED BY	DECISION	STATUS	ALLEGATION
Comp: Khoury S.O.: Pike (021)	Makuch	1985	PCC	Complaint substantiated, Pike appeal reprimand	Pike appeal pending	Discreditable conduct, unlawful & unnecessary exer. of authority
Comp: Sausik S.O.: Clark (022)	Makuch, Cole, Rumball	1985	PCC	Complaint substantiated	Adj sine die A.G. appeal pending	Discreditable conduct, unlawful & unnecessary exer. of authority
Comp: Larner S.O.: Corbett (023)	Sopinka, Hong, Popowich	1985	PCC	Complaint dismissed	Closed	Assault
Comp: Skinner S.O.: Hodgson (024)	Sigurdson, Crothers, Cole	1985	PCC	Complaint dismissed	Closed	Assault
Comp: Batushin S.O.: Corbett (025)	Sopinka, Hong, Popowich	1985	PCC	Complaint dismissed	Closed	Assault
Comp: Green S.O.: Hamilton S.O.: Gregoire (026)	Makuch, Clements, Santos	1985	PCC	Complaint dismissed	Closed	Assault
Comp: Zwirko S.O.: Earl (027)	Barrett, Clements, Cole	1986	PCC	Complaint dismissed	Closed	Assault

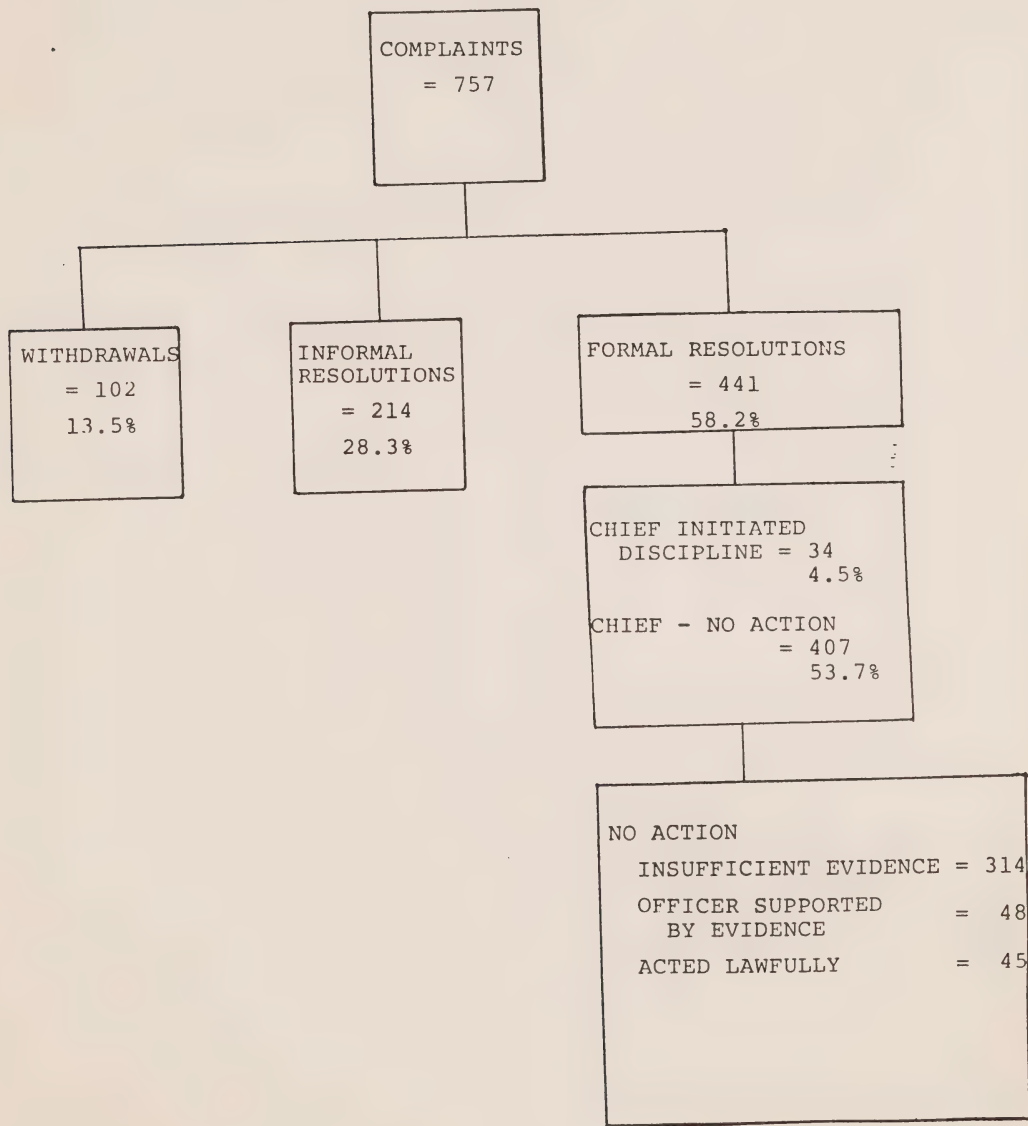
CASE (Board File No.)	PANEL	DATE HEARING CALLED	CALLED BY	DECISION	STATUS	ALLEGATION
Comp: McMorrow S.O.: Stoneman S.O.: Mills (028)	Ortved, Popowich, McLennon	1986	PCC	Complaint substantiated, Appeal pending forfeiture 3 days		Assault
Comp: Perdon S.O.: Bartley S.O.: Williamson (029)	Barrett, Rumball, Santos	1986	PCC	Bartley: complaint dismissed Williamson: complaint substantiated - resigned	Closed	Assault
Comp: Hervoly S.O.: Wiesniewski (030)	O'Connor	1986	PCC	Informally resolved	Closed	Assault
Comp: Dunlop S.O.: Wills (031)	Irish, Crothers, Cole	1986	PCC	Complaint substantiated, Closed reprimand	Closed	Discreditable conduct
Comp: Wilmot S.O.: Lloyd S.O.: Finley (032)	Cronk, Clements, Gilmour	1986	PCC	Complaint dismissed	Closed	Unnecessary use of force, unlawful & unnecessary arrest
Comp: Dempsey S.O.: Lorbetskie S.O.: Gordon (033)	Jones, Popowich, McLennon	1986	PCC	Complaint dismissed	Closed	Assault

CASE (Board File No.)	PANEL	DATE HEARING CALLED	CALLED BY	DECISION	STATUS	ALLEGATION
Comp: Tucker S.O.: Williamson S.O.: Ferguson S.O.: Attwood (034)	Millar, Crothers, Pelletier	1987	Police	Complaint withdrawn	Closed	Harassment, threatening, issuing false statement, discreditable conduct, failure to register complaint of harassment
Comp: Mitri S.O.: Sansom (035)	Cronk	1987	PCC	Complaint substantiated, Appeal pending reprimand	Pending	Incivility
Comp: Alfano S.O.: Keston S.O.: Smith (036)	Barrett, Blackwood, Rudd	1987	PCC	Hearing cancelled, Officers resigned	Closed	Assault
Comp: Lorimer S.O.: Matthews (037)	Hatton	1987	PCC	Complaint dismissed	Closed	Incivility
Comp: Federer S.O.: Stephens (038)	Ortved	1987	Police	Pending	Open	Incivility
Comp: Stankovic S.O.: Weippert (039)	Irish	1987	PCC	Changed to Informal	Closed	Incivility
Comp: Mitchell S.O.: Brand (040)	Jones, Black, Pelletier	1987	PCC	Pending	Open	Incivility

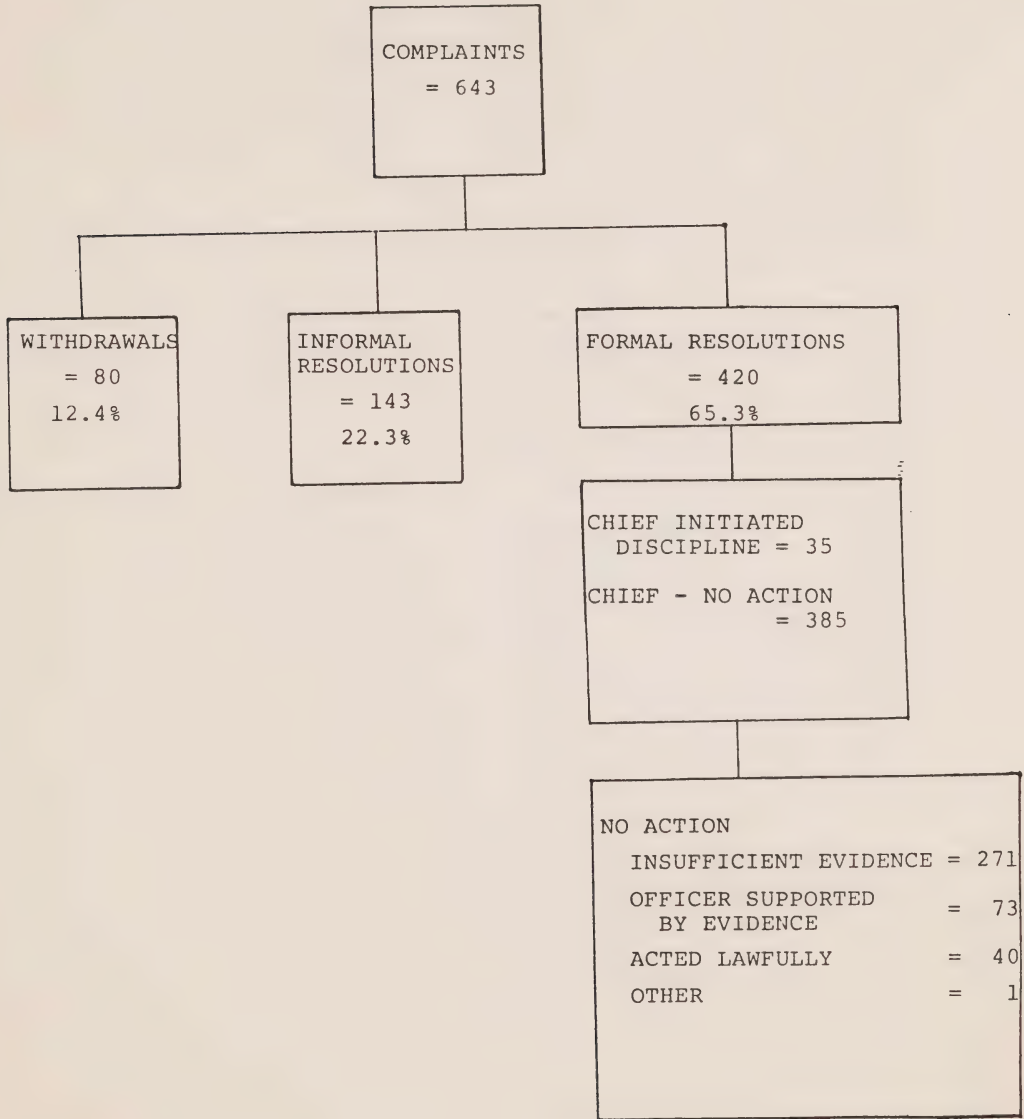
INITIAL DISPOSITION OF COMPLAINTS - 1982



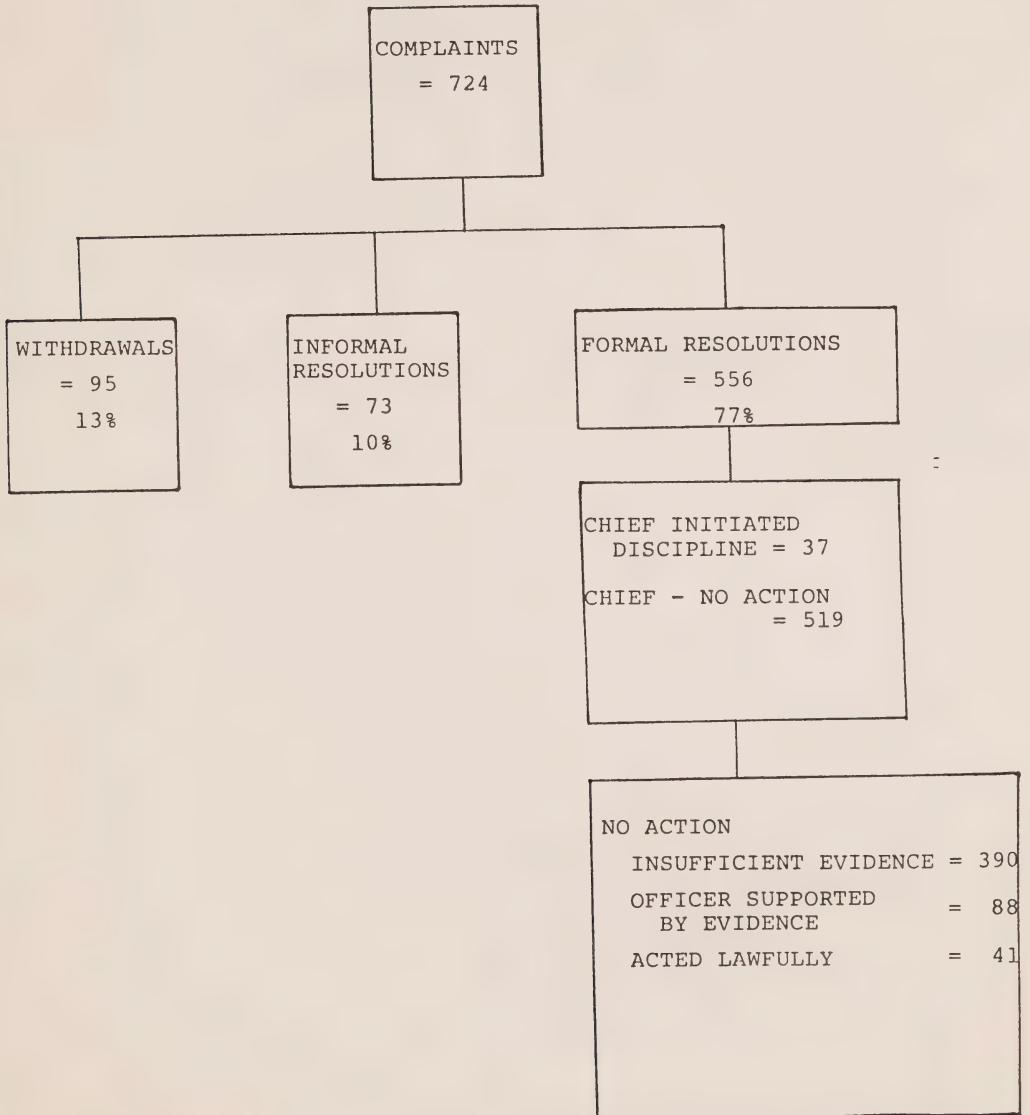
INITIAL DISPOSITION OF COMPLAINTS - 1983



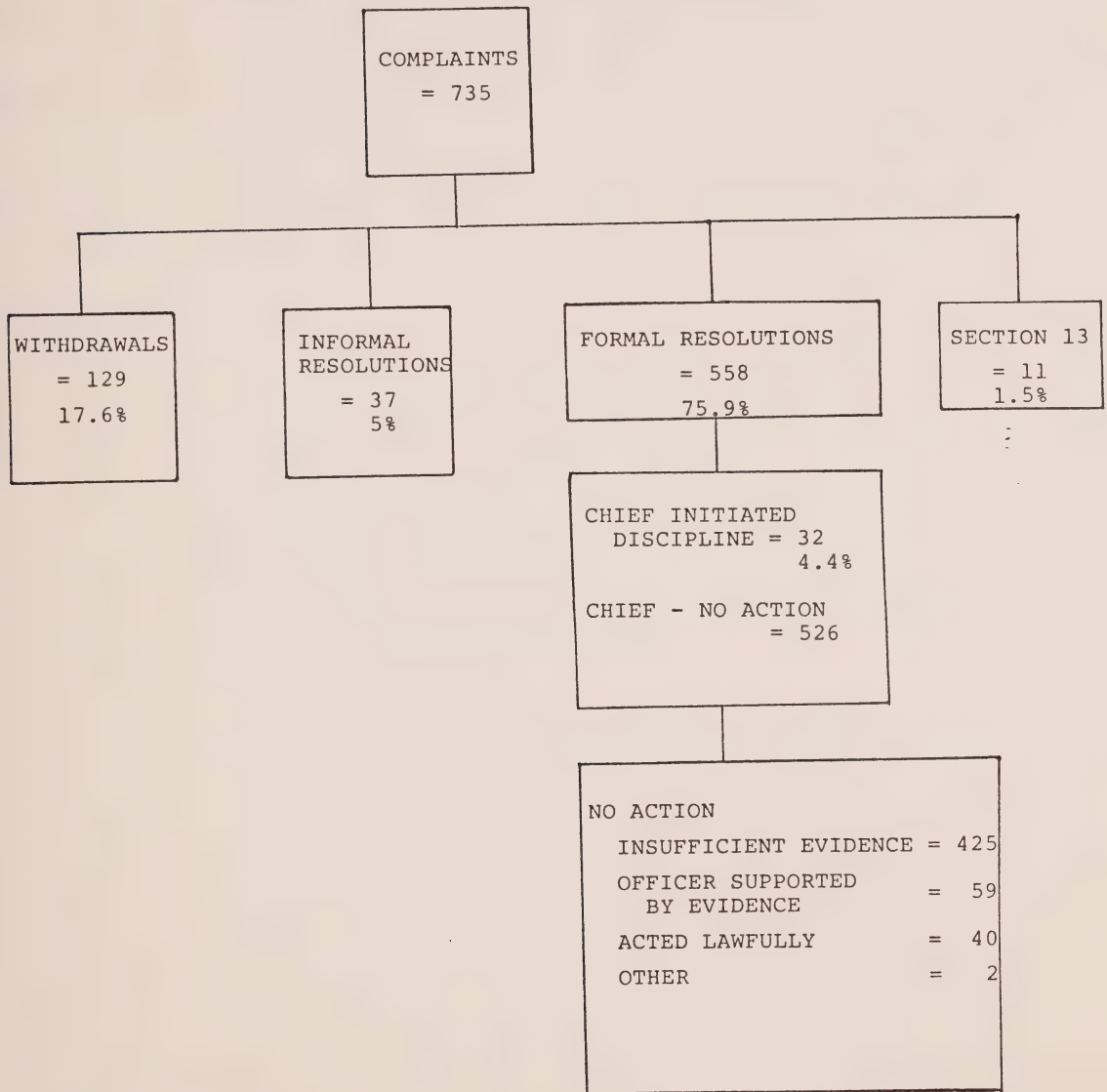
INITIAL DISPOSITION OF COMPLAINTS - 1984



INITIAL DISPOSITION OF COMPLAINTS - 1985



INITIAL DISPOSITION OF COMPLAINTS - 1986



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Administrative (coordinatrice
généraliste à l'Administration)

Field Representative
Representation

Wednesday, January 27, 1988

Dear Sir or Madam,

Enclosed, for immediate release, is a copy of a letter which our organization hand delivered a short while ago to the Attorney General's office.

It calls upon the Attorney General to investigate the conduct of the Metro Toronto police regarding certain elements of their protest against the public complaints system. It also suggests that, if statutory amendments are being considered, the system should be made even stronger than it is now.

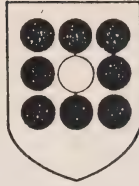
For further information I can be reached at (416) 363-0321.

Sincerely,

A. Alan Borovoy
General Counsel

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Wednesday, January 27, 1988

DELIVERED BY HAND

The Honourable Ian Scott,
Attorney General of Ontario
18 King Street East, 18th floor,
Toronto, Ontario

Dear Sir:

This is to request an investigation by your office into the conduct of the Metropolitan Toronto Police regarding the case of former constable Terry Weller.

Our request has been triggered by the recent decision to lay a criminal charge against Mr. Weller arising out of the circumstances that led to his termination of employment with the department. The decision to lay the charge has been accompanied by statements from certain police sources that additional factors have emerged which could establish Mr. Weller's innocence. Apparently, Weller himself asked for this charge to be laid.

The Canadian Civil Liberties Association is in no position to assess the merits of the parties' respective claims. We have no opinion on the credibility of the witnesses for or against Mr. Weller. Thus, we cannot judge the validity of the finding made by the complaints board of inquiry or the fairness of the penalty it sought to impose. Our representations now are addressed solely to issues of procedural propriety.

Even if it were assumed that there is some basis to challenge the decision that has been made in this case, a criminal prosecution would not be the way to do it. In certain circumstances such as those where new evidence comes to light, there are recognized remedies and avenues of redress available to aggrieved parties, including extraordinary remedies for extraordinary cases. These channels are open to Mr. Weller as they would be to anyone else in similar circumstances. But there is no reason why he should have remedies beyond those available to anyone else.

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Coordonnatrice & l'Administration

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Field Representative

Représentant

DAVID SCHNEIDERMAN

If the purpose of the criminal charge is simply to obtain a second bite at the apple for Mr. Weller, it could well represent an abuse of process. There is now no suggestion that any legal safeguards have been violated in this case. It may be that the Police Association is not happy with the statutory regime under which its members work. But that is a matter for the Legislature. Until and unless the law is changed, the police are as bound by it as is everyone else.

The person who lays a criminal charge is required to swear that he has reasonable and probable grounds to believe that the accused has committed the crime in question. But the officer who laid the charge against Mr. Weller is a representative of the Police Association which has proclaimed Mr. Weller's innocence. The case would likely create, therefore, a public perception of collusion between the accuser and the accused.

Other factors fuel this perception. If the police believed that it was in the public interest to lay a criminal charge against Mr. Weller, why did they wait so long to do it? The evidence against him was fully laid out at the time of his hearing before the board of inquiry which heard his case. His appeal against the board's decision questioned only the constitutionality of the complaints system and the severity of the penalty which was to be imposed. At that point, therefore, the record disclosed a substantial amount of evidence against Mr. Weller and an undisputed finding of guilt on that evidence. What has the Metro Police Department learned since then that explains the criminal charge it has now laid?

Metro Police Chief Jack Marks has expressed the possibility that the department will be influenced by the outcome of the criminal trial. This reveals an utter confusion about the issues. A criminal trial could not decide, as the original tribunal did, whether the impugned person should remain in the employ of the Toronto police force. The trial court could only decide, on the evidence it heard, whether or not the prosecution had proved criminal guilt beyond a reasonable doubt. An acquittal on a criminal charge is not an all-purpose vindication. Even if it were believed that the criminal process should be available in some circumstances as an avenue of vindication, these circumstances would not be appropriate for such purposes.

To leave the present situation as it is could well bring the administration of justice into disrepute. This is why it is important for your office to investigate the situation. To whatever extent any Metro police officers have behaved improperly, they might well be deserving of charges and/or discipline themselves. In such circumstances, there might also be a case for staying the charges that have been laid. The overriding consideration now is for the public to be assured that the administration of justice is behaving with fairness, impartiality, and integrity.

On this basis, the Canadian Civil Liberties Association urges the Attorney General to investigate the situation, provide the public with an adequate accounting, initiate the appropriate action where the facts warrant it, and recommend appropriate action to anybody charged with such functions. Your ultimate responsibility for the administration of justice makes your office the ideal vehicle to oversee this exercise.

There are reports that the Police Association will be having discussions with the Government regarding their complaints about the complaints system. In anticipation of these discussions, we add a further word about the merits of the police criticisms of the current system.

The Police Association has said that serious criminal allegations against them should be heard, not by the complaints system, but by the criminal courts. There, the rules of evidence are tighter and the decisions are made by real judges.

In our view, these arguments are simply devoid of merit. Judges have no monopoly on legal wisdom. Our society has all kinds of competent adjudicators who are not judges. Many of them have been chosen precisely because of their superior expertise in their areas of jurisdiction. The closest analogy to police complaints adjudication is labour arbitration where, for some years, the use of judges has been discouraged without perceptible damage to the resulting jurisprudence.

The rules on the admissibility of evidence in the criminal courts are particularly tight because the consequences of conviction could mean a loss of liberty. The rules in the complaints system are less tight (but still tighter than in labour arbitration) because there the most serious penalty is loss of employment. While the importance of job security cannot be minimized, it cannot be compared with going to jail. In any event, it would be hard to find actual examples where the current system has made dubious rulings on the admission of evidence.

Virtually nowhere else in our society are employers obliged to depend on the criminal courts when they have criminal allegations against their employees. If postal workers, garbage workers, or auto workers are accused of committing assaults or thefts on the job, they can be dealt with through job discipline and labour arbitration. There is no reason why police officers should attract a special immunity to such processes.

If anything, there is an argument in favour of a tougher regime for police officers than for many others. Policing involves a delicate public trust. The right to exercise such trust should require more from incumbents than a reasonable doubt that they are not criminals. Yet the discharge of a police officer by our existing complaints system requires proof beyond a reasonable doubt - a heavier onus than is required for the discharge of most other employees in our society. This distinction makes no sense. Any consideration of statutory amendments should introduce a standard of proof more compatible with the rest of the world.

No discussion of possible statutory amendments would be complete without reconsidering the provisions for handling the initial investigation of civilian complaints. At the moment, the system anticipates that most front-line investigations will be conducted by members of the Metropolitan Toronto Police Department. We have long been concerned that many complaints never see the light of day because aggrieved people simply don't trust the police to investigate their own colleagues.



5

The public remembers well the treatment suffered recently by a police officer whose testimony in court helped to convict a fellow police officer of a serious assault. For "blowing the whistle" in this way, the testifying officer was isolated by his colleagues. He wound up resigning his job. In the light of this experience, how are potential complainants supposed to believe that Metro police officers will fairly investigate their allegations? In our view, therefore, all civilian complaints should be investigated by people who are outside of the Force and who have no departmental interests to protect.

To whatever extent the Government embarks on a re-evaluation of the current complaints system, the Canadian Civil Liberties Association asks that these issues be considered as well.

Sincerely,

A handwritten signature in dark ink, appearing to read 'A. Borovoy', with a stylized flourish at the end.

A. Alan Borovoy
General Counsel



Council on Race Relations and Policing

950 Yonge Street, Suite 1000, Toronto, Ontario M4W 2J4 (416) 961-9831

January 28, 1988

The Hon. Ian Scott
Attorney General of Ontario
Ministry of the Attorney General
18 King St. E. 18th. Floor
Toronto, Ont.
M5C 1C4

Dear Mr. Scott:

This letter is to reiterate the Council's support for the Office of the Public Complaints Commission (PCC).

As you are aware, the Council on Race Relations and Policing is a partnership between the Metropolitan Toronto Police Force and representatives of institutions community agencies and individuals. The purpose of the Council is to develop race relations strategies and joint problem-solving models in areas of tension and conflict and to provide training and public education programs for both police and community. PCC is a full and active member of the Council.

We believe that the Metropolitan Toronto Police Force is one of the finest police forces in the world and is one of a few that commands respect of the community it serves. This has been partly achieved through the establishment of and the confidence generated by the PCC. It is for this reason that the Council has watched with great interest and concern the current opposition and boycott of the PCC by the Metropolitan Toronto Police Association.

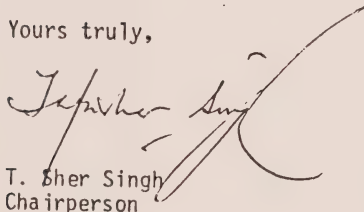
We would like to express the following points in support of the PCC:

- The PCC was established in response to allegations of police brutality and complaints by racial minority group members. In this respect, the PCC has done exactly what it was supposed to do and that is, strengthened public confidence in the Force and guaranteed procedural rights to police officers facing investigation and Board hearings. The PCC has been effective in assuaging minority concerns and in facilitating mediation to bring about better police-minority relations in Metropolitan Toronto.
- The Council would support, in principle, initiatives to fine-tune and further strengthen the PCC. However, legislative changes to the Public Complaints Act that are being proposed by the Police Association, appear to be designed to undermine the important work that the PCC does in bringing confidence to police-community relations in Metropolitan Toronto.

- We hope that there would be opportunity for a public comment on any changes that are considered with respect to the Public Complaints Act. In which case, the Council would like to request an opportunity to appear and make full and detailed submission to you and/or any appropriate body on proposed changes to the Public Complaints Act.

We look forward to hearing from you on this matter.

Yours truly,

A handwritten signature in cursive script, appearing to read 'T. Sher Singh', written over a horizontal line.

T. Sher Singh
Chairperson

Tel: 364-2404



January 24, 1988

The Hon. Gerry Phillips, M.P.P.
Minister of Citizenship
77 Bloor Street, West
6th Floor
Toronto, Ontario
M7A 2R9

Dear *Minister:* ~~Mr. Phillips~~

There has been a lot of agitation by the President of the Metropolitan Police Association to get rid of the Public Complaints Commission. I would strongly urge that this is the last thing that should be done.

While we have a very good police force in Metro Toronto there is still the minority (I hope) who abuse their authority and power and trample on the rights of citizens unnecessarily. It was precisely the fact that citizens did not trust the police to do justice to citizens when there was a police-citizen dispute that gave rise to the creation of the P.C.C. It would be a grave disservice to citizens to eliminate it now or even to modify it to the extent that it is no longer seen to be effective.

The attached clippings seem to reflect the sentiments of a substantial portion of the citizenry. I would strongly urge you to stand firm on this matter. Do not give in to the police.

Many of the abuses are against the weaker element of our society. Many of whom are immigrants.

Yours truly,

Roy G. Williams
Roy G. Williams
President

TOR Star - Oct. 20, 1987

Powers of police must be limited

Are we on our way to a police state? If recent events are any indication, one would think so. Recently, police have been found to have fabricated evidence, committed assault, and actually killed people through that flagrant display of machismo known as the "police chase." Now, the police have recklessly pointed a finger at a man whom they do not have a case against.

In leading the press to the conclusion that James Wise was the individual suspected in several murder investigations in eastern Ontario, the police have set themselves as judges and even jurors. They have declared that the man is guilty even though they do not have enough evidence to go to court.

In order to blur the issue, Commissioner Archie Ferguson of the

OPP claims that because his officers did not specifically identify Wise, they cannot be found in error in the performance of their duty. Frankly, if a thorough physical description of a man and the location of his home are given, and then the hope that the press will be capable of getting the man to confess is expressed, the press would have to be composed of idiots not to have found the man. Ferguson shows a singular lack of responsibility by claiming that the identification of Wise was the fault of the media.

It is quite possible that an innocent man might have been falsely accused; or, it could be that a guilty man may never get to trial because his rights were violated. Both horrific eventualities might now arise because of police bungling, ineptitude and careless

disregard for the rights of the individual.

The police have to be brought under control. Individual officers' errors are scrupulously hidden by a perverted (but very real) code of secrecy among their fellow officers. The police boards in this province rubber-stamp virtually every police request and exonerate all but the most blatant of police excesses. The Ontario Police Commission is most reluctant to amend, revise or overturn decisions of local boards. Is it any wonder that an officer might believe that he can trample the rights of another citizen with impunity?

I would suggest that a thorough review of our policing system be conducted.

Our calendars belie the facts. This is 1984.

JAMES D. HAY
Toronto

Letters to the Editor:

TOR Star JAN. 14/88

We must look hard at police action

I have spent some 20 years as a concerned taxpayer in support of the Metro police on issues such as tightening up the bail and parole laws, and opposing the police when their wishes would, to my mind, impose an unacceptable erosion of individual freedoms.

On the present issue of the dismissal of Constable Terry Weller, I cannot support the Metro Police Association and its president, Paul Walter, in its decision to not issue parking tags or deliver summonses.

A decision by the Civilian Complaints Board would not in itself carry too much weight with me. But the police commission is satisfied with the accuracy of the assault allegations to the extent of paying a "substantial" amount to the accuser in settlement of his lawsuit regarding the assault, and,

much more importantly, the Ontario Court of Appeal has refused to hear Constable Weller's case. I am therefore satisfied, on the balance of probabilities, that justice has been done in this case.

The "buddy system" which exists throughout the police force makes the police association's motives suspect in their protest actions and their call for a boycott of the complaints bureau. Last year, Sergeant Gary Hanneson was accused of assaulting a civilian. Despite an attempted cover-up involving several officers, Constable Derek Perks "blew the whistle" on the sergeant who, his guilt proven beyond any possible doubt, was dismissed from the force.

Although Perks had done his duty to justice and to society, and

had rid the force of the kind of "bad apple" that can grievously damage police-public relations, he received no thanks from his peers. Instead, he was treated as a pariah and hounded to the point that he had to quit the force and give up his career.

The police have never hesitated to exploit the vast reservoir of good will that the general public holds toward them, at contract time and when lax laws and judges make their job difficult or impossible to do. Each appeal from them must be judged on its merits, and in this case I strongly urge the public to think very carefully before taking a stand.

I, for one, cannot support them this time.

JEFF GOODALL
Toronto

Nov. 3/1987

Editorials

When police lie and cover up

In the past two years, judges at every level of the province's criminal courts have been moved to question the credibility of officers of the Metropolitan Toronto Police Force.

□ February, 1986: Provincial Court Judge James Crossland acquitted a Willowdale man of assaulting police after concluding that the two police officers lied: "As far as I'm concerned (the officers' testimony) was a disgrace to the force, completely unbelievable" (In August, Metro's Public Complaints Board found the two officers guilty of kicking the man in the head and docked them three days' pay.)

□ September, 1987: Ontario Supreme Court Justice M.A. Craig sent four Metro officers to jail in connection with an assault on a suspect and a cover-up that involved untrue entries in their official notebooks. Craig said the officers "tried to frame" an innocent university student, and their conduct was "a betrayal of their oath of office."

□ September, 1987: Three judges of Ontario's Divisional Court upheld the constitutionality of a ruling of the complaints board requiring two officers to resign for assaulting a suspect in custody. The board had found that the officer colluded with his partner "in the writing of his notes to cover up his involvement in the assault, and that he gave false evidence at the hearing into the allegations."

□ October, 1987: District Court Judge Stephen Borins acquitted two men charged with attempting to murder a police officer and robbery. Borins said the evidence of several Metro officers was "manifestly unreliable" and at least two of them lied.

□ October, 1987: District Court Judge John Hoolhan commented at the trial of a Metro officer charged with impaired driving causing bodily harm: "I have never been in a case where four officers did not tell the crown there was a smell of alcohol. Four police deliberately ignored the condition of the accused when they were dealing with him The motto of the police is To Serve and Protect It does not mean protection of one another from prosecution."

These comments point to a serious problem in the Metro force. It is a dangerous problem, for if police officers cannot be relied upon to gather, record and present their evidence honestly, the public is bound to lose confidence in them and in the integrity of our justice system. It becomes incumbent upon Chief Jack Marks to demonstrate by his words and acts that our confidence is deserved.

Metro police action *510A* amounts to a revolt *2d/1/88*

I regard the recent action of the police in disapproval of the existence of the Public Complaints Commission as a revolt by one organ of the government against another. It is a sign of weak government.

In substance, the police are saying, "Don't bother us. When we arrest a suspect we can do what we want with him: we can beat him up or maim him if we want to: no questions asked." The police want to return to their old ways, forgetting that the *raison d'être* of the establishment of the complaints commission was police beatings.

If we need new legislation for wife beaters, don't we need checks and balances against abuses of police powers, especially when these abuses take the form of beatings of suspects? It's a fact of life that violent and sadistic individuals are recruited into the police force. Who would want to put the clock back?

JOHN CHIMEN
Toronto

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JAN. 20/1988

Editorials

Metro's finest protect themselves

It seems as if the Metro Police Association will go to almost any length in its campaign to discredit the Public Complaints Commission.

First, the association — which represents Metro's police officers — voted to stop fully enforcing traffic violations. That occurred when the Ontario Court of Appeal upheld the forced resignation of former officer Terry Weller. The independent complaints commission — which rules on police conduct — had ordered Weller fired after finding him guilty of misconduct for brutal assault.

Now the association is showing a willingness to abuse Ontario's criminal justice process by engineering a criminal charge be laid against Weller for assault causing bodily harm. The supposed purpose is to prove Weller's innocence.

But let's look at the facts closely. First, the association could have us believe the charge against Weller was laid in the ordinary way, just like any other. In fact, court documents show it was Constable Douglas McLean who had the charge laid.

McLean just happens to be the official representative for the police association at 52 division, where Weller worked. He was not involved in the victim's arrest. Nor did he testify at any hearings.

Yet criminal charges are only supposed to be laid when someone swears under oath there are "reasonable and probable grounds" to believe and "does believe" that a criminal offence has been committed. But the police association publicly maintains Weller is innocent. So how can it possibly justify this action?

All police officers swear to perform their public duties without favor or affection, malice or ill will." How can this prosecution, seemingly brought to advance the private interests of the police rank and file, be consistent with that oath?

The association also argues that Weller is entitled to his day in court. But Weller has had his day in two appeal courts — Divisional Court and the Court of Appeal — not to mention a full public hearing at the complaints commission. He has settled a civil suit brought by the man he is charged with assaulting.

Now, by seeking a trial before a judge and jury, Weller is seeking treatment that ordinary citizens such as teachers, engineers and lawyers facing disciplinary hearings are denied. And the police association is abusing its unique authority within the criminal justice system to see that he gets special treatment.

Finally, the association justifies its action by saying it is presenting new evidence on the original incident. If so, then Weller can appeal to the Court of Appeal to reopen the case. Or, he could take up Public Complaints Commissioner Clare Lewis' offer to review any new evidence and assist in remedying any injustices revealed.

Surely Attorney-General Ian Scott cannot stand by idly in the face of this action. He has the power to withdraw the charge on the basis that it constitutes an abuse of the process of the court. If he fails to act, the intimidation of the police association will only get worse.

HAVE YOUR SAY

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6 share JANUARY 20, 1988 / E1

EDITORIAL

Public Complaints Commission stays

Six years ago the Government of Ontario created the Metro Public Complaints Commission to deal with complaints from the public about abuses by police officers. Last week a decision by the civilian body, recommending the firing or the resignation of a policeman who assaulted a man in the Eaton Centre, rupturing one of his testicles, was upheld and the officer involved, Terry Weller, has since resigned.

However the issue has not ended. The Metro Police Association headed by president Paul Walter has taken job-action to protest the decision by the Public Complaints Commission. And Walter has said that he would not call off the action until major changes are made in the way this commission operates.

It is unfortunate that the police should take this ill-advised position. The Public Complaints Commission which is now headed by former Provincial Court judge Clare Lewis not only protects members of the public but also police officers who may be falsely accused of police brutality.

While there is no argument that policing should be left to trained police officers, there is no question that the civilian review process is an effective way in helping to prevent abuses. And the officers who conduct themselves as responsible professionals will have nothing to fear from the complaints commission.

One would think the police would have welcomed the commission but, from its inception, they have been against it. And it seems that they will continue to push to have it abolished.

Well, Paul Walter and the Police Association can forget about that. The politicians at Queen's Park who undoubtedly have the backing of a wide cross-section of Metro residents, have all agreed that the Metro Public Complaints Commission is here to stay. As Solicitor-General Joan Smith has said, the commission "does exist (and) it exists for a reason."

That reason is for the protection of citizens.

One wonders why would the police be against this committee when they are not excluded from the process. As a matter of fact after a complaint is lodged it is first investigated by the police themselves and the evidence is reviewed by the commission who will then send its report to the deputy chief of police who can then take appropriate action against the officer, or officers, involved.

If there is one criticism that many members of the public had, and continue to have, about the commission is that complaints against the police are being investigated by the police themselves and there may a tendency by fellow officers not to do a thorough job. Despite this concern no call has been made by the public to disband this body.

It has been recognized that, because of the performance of some police officers, especially in dealing with visible minorities and others, there must be an independent body to review complaints individual members of the public may have about the way they have been treated.

This Public Complaints Commission seems to have more teeth than the old police complaints board which had no public review process.

The Supreme Court of Ontario has upheld the recommendation of the Public Complaints Commission in the Weller case. A responsible police force should abide by the decision of the court and Walter should do the responsible thing and advise the members of the police association, of which he is president, to drop their work-to-rule action immediately. After all they should be accountable to the public that pays them to effectively do the job of policing our communities.

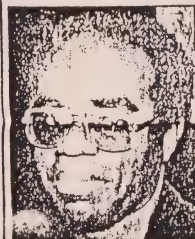
Do you think the Metro Public Complaints Commission is needed?



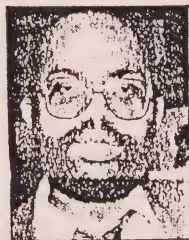
MIKE ARMSTRONG: "Yes it is needed. We must look at why the Public Complaints Commission came about in the first place. The reason was to promote race relations between the police and the community. In weighing the interests of the public against the interests of the police it must be noted that the police must serve the public."



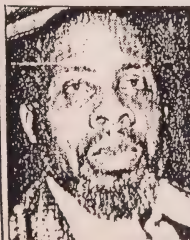
STEVE TOUSSAINT: "Yes the Public Complaints Commission is needed. The police must be made accountable to the public. The police are not beyond reproach."



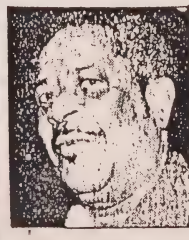
BROMME WHARTON: "Yes it is needed. We don't have a perfect society. We don't have true equality. The police approach the rich people and the poor differently."



CLAUDIO LEWIS: "Yes, in order to enhance the credibility of the police force there must be some mechanism to ensure the image of fairness. It is not good enough for the force to police itself. In a democracy we must be sure that police officers are just in their attitudes and actions."



HUGH EXTAVOUR: "The Public Complaints Commission is needed in working towards better police protection. The commission must promote non-violence by studying the philosophy of Dr. Martin Luther King Jr. via a-v-i-k community relations."



HUGH EVELYN: "The Public Complaints Commission is needed. The legislation establishing the commission was not brought into being frivolously. If the police force there are flaws with it, they should seek amendments in the proper way. But they should not go on work-to-rule."

CRIMINAL
LAWYERS'
ASSOCIATION

100 RICHMOND STREET WEST, SUITE 343, TORONTO,
ONTARIO M5H 3K6 (416) 364-4071

President: Earl J. Levy, Q.C.

Vice-Presidents: Brian H. Greenspan/Paul D. Copeland/D. Fletcher Dawson

Treasurer: John M. Rosen/Secretary: William Trudell/Asst. Secretary: Irwin Koziobrocki

January 28th, 1986.

DELIVERED BY HAND

The Honourable Ian Scott,
Attorney General of Ontario,
18 King Street East,
Toronto, Ontario.
MSC 1C5

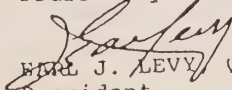
Dear Mr. Attorney:

Re: Public Complaints Act and the
Metropolitan Toronto Police
Association

The Criminal Lawyers' Association is greatly concerned about the demands made by the Metropolitan Toronto Police Association regarding changes that should be made to the present public complaints system. We are also concerned about the police tactics that have been used in an attempt to achieve those changes, i.e., refusing to carry out part of their duties and staging the criminal charge against Officer Weller.

I understand that your office has held a meeting with Clare Lewis, Paul Walter, the Chief of Police and the Solicitor General regarding potential changes to the system. Our Association feels that the present system is a very good one which may need nothing more than fine tuning. Because there was input from so many ethnic and other groups when the civilian complaints legislation was implemented we would hope that you would entertain representations in person from representatives of the community at large and not just the police and the Commissioner of complaints. Our Association would wish to make such representations.

Yours very truly,


EARL J. LEVY, Q.C.
President.

EJL/lb

PAST PRESIDENTS

His Honour Hugh R. Locke / B. Clive Bynoe, Q.C. / His Honour Arthur C. Whealy / Robert J. Carter, Q.C. / His Honour Ronald G. Thomas

PRESIDENT'S VIEWPOINT

Toronto's Finest Aren't Acting So Fine

"The [Metropolitan Toronto Police] Association fervently believes that the only good external complaints system is a dead complaints system."

So stated Paul Walter in his President's message in the November, 1987 edition of News and Views, the Metropolitan Toronto Police Association's magazine. He went on to state that the Association's goal was "the dismantling of one of the most regressive pieces of legislation in recent memory." The public was told on more than one occasion about the gathering of a \$250,000.00 "war chest" by the Association to accomplish its purpose. It is in my view a purpose which can only fail and unfortunately earn the disrespect of the citizenry for our police force.

It may be that with new police constables joining the force every year many of them do not realize why a civilian complaints system was born. They may not know that the conduct of a number of their members led to a growing concern by the public which led over a period of time in the 1970's to The Maloney Report, The Morand Royal Commission Into Metropolitan Toronto Police Practices, The Cardinal Emmett Carter Report To The Civic Authorities of Metropolitan Toronto ^{And Its} Citizens, and The Walter Pitman Report. The common thread that ran through the findings of all the aforementioned reports was that there should be civilian oversight of police conduct. One senior police officer was quoted in the Toronto Star on December 31st, 1987 as saying - "we've got it (a public complaints system) because we asked for it," ... "we swept these things under the rug for too long. We've all seen senior officers that throw out reports dealing with worrisome individuals."

Although Mr. Walters states that the Public Complaints Act is "one of the most regressive pieces of legislation in recent memory", it is perhaps worthy to note that when the Divisional Court rejected

Officer Terry Weller's first appeal it held in part:

"The evidence is clear that the Metropolitan Toronto Police Association supported the new legislation in briefs submitted to the legislature, both as to the new rights it gave to police officers, such as more independent investigation and adjudication of complaints, and better procedural protections, as well as the other changes, some of which are attacked in this case. That is, on balance, and taking an overall view of the legislation, the Metropolitan Police Association supported it. While that does not bind the court's hands, it is a helpful guide to how the legislation was viewed in totality before anyone's ox had been gored.

Finally, regard must be had to the abundant uncontradicted evidence that the acts were a legislative attempt to resolve special problems that had arisen in Metropolitan Toronto, stemming from its well-known cultural mosaic, and leading to difficulties peculiar to Metropolitan Toronto and the relations between a number of the ethnic groups in it and the Metro Police. The legislative reaction is neither harsh, unreasonable, unwarranted nor irrational, but appears to be measured and reasonable and to have valid legislative objectives."

In my opinion this city's public complaints system is a very good one which has served to act as a deterrent (with some exceptions) to those officers who might otherwise have crossed the line of proper police conduct; it has brought the city of Toronto additional respect for its civilized way of life, particularly from a number of minority groups who had become so disturbed by police treatment; and it gave to the Metropolitan Toronto Force a new-found respect which it was losing through the media. It hurts to say that these benefits are in danger of being lost because of the recent events surrounding the dismissal of Officer Terry Weller.

A civilian complaints board of inquiry unanimously found Officer Weller guilty of misconduct. The board found that - "the only penalty we think would properly serve the public interest is to direct that the officer resign from the Metropolitan Toronto Police Force, and in default of resigning within 7 days, be summarily dismissed."

The allegations against Officer Weller which were found to be established are set out in the judgment of the board of inquiry in part as follows:

"On February 15th, 1984, Mr. Neely attempted to use someone else's credit card to purchase goods in the Shoppers Drug Mart in the Eaton Centre in downtown Toronto. When a credit card check was done by the store clerk, Mr. Neely realized he would be caught and attempted to escape. He got out of the store into the mall area, but was apprehended by store clerks, Eaton security guards and mall security guards in a scuffle lasting about 5 minutes.

The police were called and Mr. Neely was taken by the security guards into a back room in the Shoppers Drug Mart to await the police. Two police officers arrived almost immediately; P.C. Terrence Weller, the officer complained of, and his partner, P.C. Derek Creegen. Mr. Neely says the officers took him into a room and closed the door. P.C. Weller then asked him his name and Mr. Neely refused to tell it. P.C. Weller then said words to the effect: "We can do this the hard way or the easy way."; then he grabbed Mr. Neely by the lapels of his jean jacket and kned him in the groin. He then punched him in the abdominal area twice, then threw him to the floor with a twisting motion, so that he fell to his left knee and onto his back. Mr. Neely says that P.C. Weller then lifted his right boot and brought it down on Mr. Neely's left ribs twice.

Mr. Neely sustained very serious injuries

that day. He had a ruptured testicle, and torn ligaments in three areas of his left knee, along with clinically observable tenderness in the right upper side of his abdomen and over the lower ribs.

P.C. Weller denies using any force whatsoever on Mr. Neely and asserts that the injuries must have been sustained in the scuffle in the mall area, with the various security officers and store clerks."

Officer Weller appealed the finding of misconduct on constitutional grounds to the Divisional Court. That appeal was unanimously dismissed. His appeal against sentence was dealt with by the court in part as follows:

"It is questionable whether considerations, such as collusion, false testimony or lack of remorse, are appropriate for the purposes of increasing the penalty that would otherwise have been found to be proper. However, we are of the opinion that, even disregarding these elements, when we consider the extent to which the special trust placed in police officers was abused by this unprovoked assault, together with the serious and permanent injuries which resulted from it, and in spite of the officer's prior good record and strong possibility of rehabilitation, the penalty posed was the proper one."

Officer Weller's motion for leave to appeal to the Supreme Court of Ontario was dismissed unanimously with costs awarded against Weller to the Respondent, Mr. Neely.

Officer Weller was a co-defendant along with the Chief of the Metropolitan Toronto Police in a civil suit brought by the victim. The defendants settled the law suit by paying \$30,000.00 (according to a statement by Paul Walter in the press) to the plaintiff, Mr. Neely. Officer Weller's position is that settlement was really made by the Board of Commissioners against the recommendation of his counsel and that the settlement was made without any admission of guilt on his part.

As a result of Officer Weller's lack of success in the courts the Metropolitan Toronto Police Association voted to boycott the Public Complaints Commission and to stop issuing traffic summonses with the obvious purpose of depriving the public of substantial income. Sabres were now more than just being rattled - the police had thrown down the gauntlet. But this was not to be the end of matters. Some 4 years after the facts arose and some 3 years after he was directed to resign from the force Weller demanded that he be charged in criminal court so that he could be brought before a jury to be vindicated.

The individual swearing the information charging Weller with assault was Constable Douglas McLean, the 52 division representative for the Association. This occurred very shortly after a press conference held by Weller asking to be charged. McLean swore an information that he has reasonable and probable grounds to believe and does believe that a criminal offence was committed. It is not only Weller's position that he is innocent, it is a united police association's position that he is innocent. A significant question is obvious - how can McLean, the 52 division representative to the Association, swear that he does believe Weller to be guilty of the assault? It will of course be for the Crown Attorney's office to determine which steps it will take if it feels there has been an abuse of process, however, it is clear that by bringing the charge against Weller in these circumstances, the police are using the justice system in a way that no other citizen can. There are no doubt many who wonder why Weller did not ask to be charged earlier are the police through Weller seeking an inconsistent verdict for the purpose of bringing about a "dead complaints system?"

The Association not only held the public up to ransom by having its members refuse to perform their duties under the Police Act, it has resorted to perverting the justice system by staging this charge in obvious collusion between the police accuser and the accused policeman. It is sad to say that our police have set a very bad example as law enforcement officers. Their actions can only erode public confidence and strongly reinforce the need for civilian review.

Why is the Association so afraid of a civilian complaints system? There have only been 40 boards of inquiry ordered since 1981. There have only been 17 findings of guilty, only 2 dismissals (including Weller) and 6 officers have resigned whilst under investigation. In the 3 years prior to 1987 there were 2249 complaints against police officers and less than 5% were disciplined.

Notwithstanding police complaints about the unfairness of procedures there are in fact very real protections for any officer who is brought before a complaints board of inquiry. Unlike any other administrative tribunal the case against a police officer must be proven beyond a reasonable doubt as in the criminal courts, and not on the balance of probabilities. Before the public complaints system was established the case against a police officer only had to be proven on the balance of probabilities in discipline hearings under the Police Act. Another likeness to the criminal court is that a police officer does not have to testify. Also as in the criminal courts there is pre-trial disclosure which was not a requirement with internal discipline hearings under the Police Act. No duty statement an officer gives is admissible before a board of inquiry without the officer's consent. This was not the case prior to the public complaints system. If there is a potential criminal charge against the officer contained in the complaint the officer does not ^{even} have to give a duty statement by virtue of Administrative Procedure #12. There are rights of appeal to the Divisional Court and thereafter to the Ontario Court of Appeal; rights they didn't have before the public complaints system. One of the 3 members of the board hearing the complaint is appointed on the recommendation of the Police Association and the Police Commission jointly. (Of the other 2 members, one has to have training in law and is to act as chairperson and the other is a Metro Council representative.

Why isn't Paul Walters, the Police Chief or other responsible members of the force bringing home to the rank and file how much

better off they are with a public complaints system than without one. The Police Association knew this to be the case when the system was implemented. This is obviously why they supported the public complaints legislation, as noted by the Divisional Court in Officer Weller's appeal.

A loud complaint by the Police Association is that the rules of evidence are relaxed, unlike a criminal trial. However, there is a fundamental difference between a complaints tribunal and a criminal trial - and that is that the liberty of the individual is at stake in a criminal trial. Officer Weller's liberty was never at stake whilst he was in the public complaints system. This approach to the rules of evidence is no different for the police than most other statutory tribunals that come under the Statutory Powers Procedure Act. The police of course would also have any benefits as well as any burdens of the elasticity in the rules of evidence. However, notwithstanding that strict adherence to the evidentiary rules is not compulsory the boards of inquiry have not had an open door policy in this regard. Officer Weller was not found guilty of misconduct because of any relaxation of the rules of evidence and there has been no allegation that such occurred in his case. Credibility was the sole determining issue.

There is no Judge that sits on the board of inquiry. There is however a lawyer trained in the law that sits as chairperson. The police demand that a Judge be the arbiter. This of course would hardly make for a truly civilian complaints system. A Judge who has police officers appearing before him or her so often as witnesses and some times as accused would not present an appearance to the community of being unbiased. In a Toronto Star article of June 27, 1987 it was noted that the police have a credibility edge over a civilian in a courtroom. A number of explanations were offered for this (some of which may have more merit than others):

There is an identification by Judges with the officer as part of the same structure of authority; there is concern by Judges that the finding of credibility against an officer in a particular case will impair the officer's credibility in other cases when his or her testimony is necessary for a conviction; there is concern that giving the citizen the full benefit of the doubt when his evidence conflicts with the police will lead to too many acquittals and give the public the impression that the courts are too soft; there is the realization that the police officer's professional standing is on the line in that a conviction for assaulting a civilian would be used against the officer in an internal disciplinary proceeding or before the Public Complaints Commission and could also affect a civil suit against the officer; the belief that police officers are professional witnesses who could make more reliable observations under pressure than civilians; and the selection of most Judges from privileged economic and social environments where they are not likely to have been routinely harassed by the police. Whether or not these observations are true with respect to a particular judge is not as important as the public perception as to their truth. The simple fact remains, the percentage of police officers convicted of assault is extremely low compared to civilian convictions for assault.

I do not pretend that the legislation is not in need of fine tuning, just like any other legislation. The police feel that there should be a limitation period for complaints to be laid. This seems to make sense if there is a proviso that in the opinion of the Commissioner of Complaints, on reasonable cause being shown, the limitation period should be extended. The police also feel that the civilian complaint system should not apply to police officers who are off duty ^{when} ~~and~~ their actions are in no way connected with their duties as a police officer. This appears to be a sensible complaint as well.

During the 25 years of my practice I have come in contact with a

multitude of police officers. There are so many that are reasonable and proud of their force that it is difficult to understand why their voices have not been heard. The police association will never accomplish its avowed purpose of detroying the civilian complaint system. It is a system which is fair to them and to those they serve and protect. Their actions will bring only impatience, disrespect, intransigence and failure. I believe that our police force is better than it has shown on this issue. I only hope that their sensible leadership will come forward to set an example.

"Public opinion was swinging toward the police until last Tuesday ... then the public lost a certain amount of respect and the polls seem to indicate that the public is 2 to 1 against the police position ... But in good conscience I can't ask our membership to take a course of action that is just going to cause them to fall off a cliff ... I don't want to see them self-destruct."

Paul Walter, in the Toronto Daily Star January 25, 1988 after the Police Association meeting January 24, 1988 when they narrowly voted to return completely to work.

THE CANADIAN BAR ASSOCIATION-ONTARIO

SUBMISSION
TO

THE ATTORNEY GENERAL
OF ONTARIO

RE:

THE METROPOLITAN TORONTO
POLICE FORCE
COMPLAINTS AMENDMENTS ACT, 1987

DATED:

DECEMBER 31, 1987



CANADIAN BAR ASSOCIATION-ONTARIO

The Canadian Bar Association-Ontario (CBAO) is an autonomous provincial branch of the Canadian Bar Association which has been in existence since 1896. Representing over 15,000 Ontario lawyers, judges and law students, the CBAO has the following objectives:

- To promote, stimulate and participate in legal research and law reform;
- To improve and promote the availability and quality of legal assistance to all residents of Ontario;
- To uphold the profession of the Law, and
- To encourage a high standard of legal education, training and ethics.

The CBAO is a voluntary membership organization which is governed by a 200 member Provincial Council, composed of lawyers, judges and law students from across the province. The Provincial Council meets on a quarterly basis through the year. The 16 member Executive Committee is elected by the Council and meets on a monthly basis.

SUBMISSION TO THE ATTORNEY GENERAL OF ONTARIO

RE: THE METROPOLITAN TORONTO POLICE FORCE

COMPLAINTS AMENDMENT ACT, 1987

The Attorney General of Ontario has introduced into the Legislative Assembly the Metropolitan Toronto Police Force Complaints Amendment Act, 1987. This Bill represents the Ministry's continuing effort to deal with the problem of complaints made by citizens against police officers. The Criminal Justice Section of the Canadian Bar Association-Ontario (CBAO) has reviewed the Bill and offers the following comments.

It should first be observed that the Metropolitan Toronto Police Force Complaints Act, 1984, which this Bill seeks to extend, was and is an improvement over the prior system of internal police investigation. The CBAO believes that any public institution must be open to scrutiny by the citizens of this province. The original Act of 1984 attempts to permit a more open and accountable investigation of police activities through the office of the Public Complaints Commissioner. Unfortunately, the original Bill does not provide that the Independent Commissioner deal with all complaints received against the police. It is only after an internal investigation has been completed and a person is dissatisfied with the police investigation that the matter may be turned over to the Public Complaints Commissioner. In our view, this is not acceptable. While there are, unquestionably, unfounded complaints made

against certain members of the police force in Metropolitan Toronto there have also been incidents where an internal investigation has found a complaint not to be justified but the Public Complaints Commissioner has overruled internal police findings.

In order to ensure public confidence in the administration of Justice and to be sure that police, like all other persons, are accountable, it is the opinion of the CBAO that the Act of 1984 could be improved by providing that all complaints against a police force are referred to an independent commissioner. The public must be able to see that complaints against any person who holds the position of trust which a police officer does will be investigated by an impartial third party and that no question of favoritism or vindictiveness can colour the judgement of that investigator. We therefore urge that the office of the Public Complaints Commissioner be expanded to provide that all complaints against police forces be dealt with by that office or similar office and that an internal investigation of police wrong-doing be terminated.

The Act of 1987 does not do this and, in the opinion of the CBAO, this is a failing.

The new Act also, however, must be considered an improvement over existing police complaints legislation outside of

Metropolitan Toronto just as the Act of 1984 improved the situation within Metropolitan Toronto. The functioning of the Public Complaints Commissioner's office has shown that an independent review procedure is workable and desirable. Nonetheless both Acts fail to address important points. It is to those that we turn now.

There are no provisions in either Act which deal with the question of whether or not jurisdiction is lost upon the resignation of an officer whose conduct is under investigation. We believe that such jurisdiction should not be lost. If it is alleged that an officer has abused his position of trust, acting in his role as a police official, it is essential that the public investigation into his or her conduct not be frustrated by that officer resigning from a police force. To permit an officer to escape scrutiny or punishment where appropriate by resigning from a police force is to deny the public its right to have allegations of wrong-doing adjudicated. It must never be forgotten that because police officers hold a position of great trust in our society, where it is alleged that such trust has been broken the public has a fundamental interest in determining whether or not the allegation of wrongful conduct is well founded.

Further, the Act of 1987 permits individual municipalities to determine whether or not they will become part of the

Independent complaints procedure. In the CBAO's view, this is totally unacceptable. The Legislation should be altered to permit any person, anywhere in Ontario, to have the right to file a complaint and to have it dealt with. To permit a patchwork approach to police complaints and to thus force people to resort to the Civil Courts in certain areas of the Province is not an appropriate legislative response to a problem which may exist anywhere in the Province.

We propose that this Legislation be amended to create Municipal or Regional Police Complaints Commissions modelled upon that in existence in Metropolitan Toronto and which would include the Ontario Provincial Police. If this is done, any person in this Province would then have the right to have a complaint dealt with by an Independent Investigator. A complainant would not have to resort to the Civil Courts in order to seek redress.

The CBAO recognizes, however, that some municipalities may have difficulties in implementing such legislation or that the Province may need time to study how to group municipalities or regions or how to otherwise implement this proposal. Therefore, the CBAO proposes that the legislation permit an immediate opting in provision but require all municipalities or the appropriate provincial authority to have a system of complaints procedures in place by January 1, 1990. In this way each municipality is given

sufficient time to deal with practical problems that may arise in implementing appropriate Legislation.

It should also be noted that, in its present form, this Legislation may well run afoul of Section 15 of The Canadian Charter of Rights and Freedoms. Specifically, that section guarantees every individual the right to equal protection and equal benefit of the Law without discrimination. One must seriously question whether or not the principles enunciated in Section 15 can be met when an individual in, for example, the County of Essex must resort to the expensive and time consuming procedure of a civil action against a police officer in order to seek redress or to bring a complaint to light whereas an individual in the Judicial District of York need only file a complaint with the Public Complaints Commissioner. While the Supreme Court of Canada has yet to rule on the full meaning of the equality provisions of the Charter the general approach taken to this question has been that the equality provision demands that persons similarly situated must be similarly treated under the Law. In our respectful submission mere geographic locality is not a proper basis for denying individuals the full benefit of legislative programs. We are strengthened in this view by the recent decision of the Ontario Court of Appeal in the case of the Queen v. Hamilton (unreported), released October 29, 1986.

The CBAO urges that the Ministry reconsider this Legislation and address those points set-out above.

MEMBERS OF THE CBAO CRIMINAL JUSTICE SECTION EXECUTIVE

Chairperson:	Collin L. Campbell
Vice Chairperson:	Brian Heller
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Past Chairperson:	David Price
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	Petra Newton
	Allan C.R. Whitten
	Michelle Fuerst
	Howard Rubel



Urban Alliance on Race Relations

January 26, 1988

The Editor
The Toronto Star
One Yonge Street
Toronto, Ontario
M5E 1E5

Dear Editor,

The Urban Alliance on Race Relations and other organizations worked hard for the establishment of the Public Complaints Commission to investigate the mistreatment of minority individuals by some police officers in Metro Toronto. The current campaign by the Metropolitan Toronto Police Association to destroy the Public Complaints Commission is reprehensible and should be totally rejected. Your editorial of January 20, 1988, Hits the nail squarely on its head. The public may have forgotten that the initiation of that Commission was the result of a long and often bitter struggle by several groups including the Urban Alliance on Race Relations, C.I.R.P.A. (Citizens Independent Review of Police Activities).

Assaults, harassment and other instances of mistreatment reached a crisis point when two police constables kicked in the back of Albert Johnson home and shot him to death. The aroused community demanded action against this instance of police brutality. The police, then as now, insisted that only police were capable of investigating charges against their fellow officers. They ignored the fact that an infinitesimal number of police were ever disciplined by their own complaint bureau.

Citizens demanded that investigations of alleged police mistreatment be taken from the police and that a civilian complaints bureau be established. Finally the then Attorney General, Roy McMurtry, acceded to this public pressure. The present Public Complaints Commission was organized in the early 1980's.

Citizens and their organizations had won a victory, albeit a limited one. Members of the Police Association led a bitter battle against the establishment of a civilian commission. They won the right to be given the initial investigating role. The

-2-

civilian commission could only become involved after the police had 30 days to do their own investigation. The police had succeeded in maintaining a very important role in investigations of complaints against their fellow officers. The Association is now trying to turn the clock back to the time when they alone decided the merits of complaints. The new system has been hailed as an important step in regaining some degree of citizen control of the men and women who are paid to enforce the laws.

While the record of the Public Complaints Commission is not as effective as many would wish, it apparently has had some positive results. And, even more important, the fact that a Public Complaints Commission exists has an important symbolic effect. Ordinary individuals can expect a sympathetic rather than a hostile hearing from officers attempting to protect their colleagues.

Rather than destroying the Public Complaints Commission, the organization should be given the right to initiate investigations of complaints against police officers. It should not have to await the elapse of 30 days, or for the agreement of the Chief of Police.

The Toronto Star is providing an important service in bringing this matter to the attention of the public. While none of us are interested in attacking "Metro's Finest" as a whole, the record clearly indicates that there are a few "bad apples" in that barrel. The public has a right to know that police officers are not given free rein to assault citizens with impunity.

Sincerely,

Dr. Wilson A. Head
President
Urban Alliance on Race Relations

WH:ma

DECEMBER 1985 P.5

by Douglas Ramsey

The Office of the Public Complaints Commissioner, under the direction of Sydney B. Linden, Q.C., began operation on December 21st, 1981. It was created in response to recommendations found in numerous studies and in response to public opinion which called for greater civilian involvement in resolving civilian complaints against the police officers of Metropolitan Toronto.

The above paragraph is a condensed version of a June 28th, 1983 news release from the Office of the Public Complaints Commissioner. It would have us believe that the Commission was created solely due to the general public's dire need for another avenue to complain about how they were mistreated and abused by the police in general in our fair City of Metropolitan Toronto.

All we can say is Hogwash; the old nickname of Hogtown is certainly appropriate in this case. When was the last time anyone you knew who was not a member of, nor connected with a police force, indicated to you that they felt this overwhelming need to have another means of complaining about the police in Toronto let alone in general. This brings up to the point way back in time when the Public Complaints Commission was first introduced. We were told by the Conservative Government that this was just a pilot project in Toronto and would upon completion, if found to be successful, (was there ever any doubt) be incorporated province wide. Well here we are with a permanent Public Complaints Commission in place and still only covering us, the terrible meanies in blue, who have such little regard for the general public that the provincial and municipal governments must spend millions of dollars annually not only to protect the public from us, but also to protect us from ourselves.

It is a tribute to the senior officers of the Force as well as all the rest of the members of the Metropolitan Toronto Police Force that we quietly and with great dignity accepted this insult from the then Conservative provincial government who, in the interest of self preservation, succumbed to the wishes of a few minority and pressure groups, who in their own self serving interests, lobbied the government for this unnecessary and costly piece of legislation.

We won't bore you with how the Com-

mission works or a long list of statistics, but here are a few you may find of some interest.

There has been a total of 3,016 complaints of police wrong-doing to September 30, 1985; there has been a total of 199 requests for review of the Police Forces Complaint Bureau findings since the Commission's inception. There has been a total of approximately 16 Review Board Hearings called. (Total is approximate due to the fact that the Annual Report compiled by the Office of the Public Complaints Commissioner does not reflect the numbers in a clear and concise manner. While very accurate statistics are kept for almost every other conceivable issue, the number of hearings actually conducted over the years since its inception is poorly documented and very cloudy when it is referred to.)

As a result of these hearings, a total of 10 officers have been found guilty of some misconduct and given a penalty ranging from loss of 3 days to outright dismissal, not to mention several edicts from the Commission as to how we will have to operate in the future in order to minimize complaints in a certain area. So if you have been wondering where some of the latest weird changes to your Operational Procedures book have originated, don't always blame Operational Planning. From the Board of Commissioners of Police we have heard nary a whimper of protest, but after all, three out of the five are appointees of the late Conservative Government.

With mixed reactions from our membership, this independent review board was legislated upon us and we have come to find that it has not functioned as effectively as promised. The result being, as you are now aware, a review board with treats police officers as 4th class citizens, and which apparently cannot justifiably maintain its existence cost wise, especially with the recent loss of the Ontario Government's coveted triple A credit rating.

We find it somewhat disconcerting that while the complaints against Police have shown a general decline since the Boards inception in 1981, the number of hearings each year has increased with more officers being involved and somewhat stiffer penalties being handed out as the date for permanent status drew closer. This trend has continued

since its formalization. It would be a prudent assumption to think that if the Public Complaints Bureau was working as well as the Commission indicates in its Annual Reports, then there should be fewer hearings and a lessening of officers found guilty as the members of the Metropolitan Toronto Police Force come to recognize that they cannot treat citizens in the poor and unjust manner that it has been alleged. That is, unless you feel you're as dumb as some people have been telling us for all these years. Personally, we take exception to that belief and, for that reason, coupled with the need to protect our members from needless persecution directly or indirectly, we are now challenging the Public Complaints Commission in the courts. It is common knowledge within the membership that the Public Complaints Commission has done more to pull down the morale and operating efficiency of the Force as a whole than any other organization in recent memory.

We feel it is safe to say that the Senior Officers have been less than vocal in their condemnation of the Complaints Commission. Surely they are aware of the stressful effects, created by the Complaints Commission, on the officers under their command. Not only has morale deteriorated but most importantly, the high calibre of policing for which Toronto is well known has deteriorated as well. The mistrust of getting a fair and impartial hearing at the hands of the Complaints Commission has begun to effect the safety and wellbeing of the general public and their property in our fair city. We are all affected by these attitudes in one way or another. We fully realize that speaking out draws attention to oneself, but surely no Senior Officer rose to his present rank without ever having to speak out or take a stand on an issue. These are strong words and will not sit well with the politicians, however, we as police officers operating daily under the ever watchful eye of the Public Complaints Commission, know them to be true.

It is with these thoughts in mind that we, the Association, now find ourselves having to fight against the continuation of the Public Complaints Commission a necessary ending to what could have been a promising avenue for the protection of our members' rights as well as those of the public. We also invite any and all Senior Officers to join with us in our endeavor.

THE PRESIDENT'S MESSAGE

by Paul Walter

FEB. 1986 p.4

Citizen Complaints

I and my colleagues on the Association's Board of Directors urge you all to re-read the "Bill of Rights for Police Officers of Police as a means of enshrining procedural and substantive protections for officers subjected to the provisions of what was then the Complaints Project Act. As matters have unfolded, the complaints process has now been institutionalized on a permanent basis, subject, of course, to our constitutional challenge. It wreaks havoc with the morale and confidence of all Metro Police Officers. Another disturbing circumstance has arisen: several of the protections that were developed in the Bill of Rights are being ignored.

In respect of citizen complaints, there are two areas of particular concern: statements requested by the Public Complaint Bureau and the filing of Injury and Use of Force Reports.

The advice of your Board of Directors in these areas is as follows:

Statements

When a member is requested to provide a written statement from the Police Public Complaints Investigation Bureau at 3080 Yonge Street, simply state as follows:

"On the advice of my counsel, I have nothing to say."

Memo Books

If requested by the Police Complaint Bureau, you must submit a photocopy of your memo book for the day in question.

Injury Reports

You should describe only physical injuries and outline any complaint of injury made by the person. You are not required to explain the possible causes for any injury or complaint of injury.

Use of Force Reports

Simply state as follows:

"On the above date and time, I took the accused person into custody according to Administrative Procedure 1.(b).1, as required."

Investigations and Interviews

If an investigator from the Public Complaints Commissioner's office contacts you regarding an investigation or interview, state that you first want to speak with your M.T.P.A. representative.

We appreciate there may be an element of danger in our advice since filing Use of Force Reports in the manner suggested might give rise to Police Act charges. There is no way of telling how such charges would be disposed of since there is neither past practice nor precedent upon which to rely. If charges are laid, the Association will, of course, provide you with counsel to fight your case.

There are on-going discussions with the Board of Commissioners and others, the purpose of which is to ensure that Metro Police Officers be afforded complete due process of law. Until further notice, the advice of the Board of Directors should be adhered to in all cases.

Finally, if you find yourself in a situation where you think it would be to your benefit to deviate from our advice, do nothing until you have discussed the matter further with an Association representative.

Paul Walter

FEB. 1986 P. 7

LETTERS TO THE EDITOR

All Letters MUST be signed, name will be withheld upon request.

Dear Mr. Ramsey:

Your December editorial on the Public Complaints Commission was of special interest to me. My husband, PC Lorne Clark (#6605), and I just spent five months of hell while waiting for him to come before the court on a charge of common assault arising from the performance of his duty. No one who has not gone through that can understand what it's like, and that includes the "Senior Officers (who) have been less than vocal in their condemnation of the Complaints Commission." I could tell you stories to curl your hair, but you're a paramilitary organization and I see no future in trying to rock the boat.

The trial is over (as of 6 December), my husband was acquitted, but you don't immediately recover from months of humiliation, embarrassment, frustration and the hurt and betrayal you feel when the law you're trying to uphold turns against you. My husband's honour and honesty, not to mention his career, were on the line. At one point he was asked to resign from the Police Force. Some support, eh? We are still to find out if the Complaints Commission plans to proceed with a hearing. The matter may well not yet be at an end. At least the Police Force will probably drop its charges of conduct unbecoming under the Police Act.

Anyone who knows my husband knew the charge was bogus from the start, which made it all the more frustrating when he received a total lack of official support from the Police Force and the Police Association. Evidently it is Police Force policy to throw the occasional cop to the wolves. I resent that my husband fell prey to this dubious honor. If you are truly concerned with the stress and morale deterioration caused by charges laid against cops while they are in performance of their duties, I can say from first hand experience that you need to form support groups for such unlucky officers, as well as provide at least temporary financial aid. At present, my husband is out of pocket \$1000 spent in defending himself against a charge he would never even have incurred were he not a police officer. The Police Commission may or may not reimburse him. When he went to the Association, he was told by Stu Udall, "You're on your own."

Official support would have meant a lot to both of us. It was a great disillusionment to discover, as the weeks passed, that Lorne really was "on his

own." His biggest hurts were administered by a couple of superior officers who got where they are by stepping on others. Fortunately his sergeants, his staff sergeant, and the fellows on his shift *did* support him. Many showed up at the trial, including the staff sergeant in case he was needed to give character evidence.

The fact that so many cops were so interested in the outcome of this case proves your theory that morale and policing will deteriorate in the face of increasing complaints made against cops on duty. As one of the investigators involved with the case remarked to me after the trial, "It's a shame this happened to Lorne. It can't help but affect how he reacts in future. He'll think twice before stepping into a situation like that again. It's too bad because he's a damn good cop." The other cops on his shift have learned vicariously from what he's gone through. As vulnerable as they're beginning to feel, they may start to take a step back and turn a blind eye. No one wants to face a criminal charge every time he does his job. Is there no way to alert the public to this trend? Is this what the public really want?

As far as educating the public goes, I'd like to make one observation. They were told via the radio and paper when the charges were laid. Naturally, the fact that Lorne was acquitted is not newsworthy and is therefore ignored by the media. In addition to in future providing emotional and financial support to beleaguered members, could the Association not launch a campaign to educate the public in the disservice being done to it by CIRPA and the Public Complaints Commission?

The effects of my husband's case, even though he was acquitted could well be far reaching. He broke up a fist fight between two boys, talked to them, made them shake hands and sent them on their way. They were fine. Two days after the fact one boy had charges laid, and suddenly it was necessary for Lorne to prove he hadn't done more than simply break up a fight.

Before and during the trial some interesting, but useless, facts came to light. The prosecution's chief witness was a young woman whose husband is a member of CIRPA. It is probably relevant that upon witnessing this supposed beating, this person did not go to the police on her own. She and her husband convinced the boy the cop had viciously assaulted him, took him home, con-

vinced his parents, and it went on from there. To me, what they did was criminal, because they manipulated a minor and his naive immigrant parents. During the lunch break the mother approached my husband and apologized for his having had to come to court. She said when someone brought her son home and they told her certain things had happened, she had believed them. But now she could see what had really happened, and when she got home her boy was going to get a whipping for lying. Unfortunately, no one is going to give a whipping to the CIRPA members. The chief witness, when advised her original statement was too farfetched to stand up in court, was allowed to change it, drastically. Through their efforts to nail a cop, any cop, to the wall, CIRPA has done a great disservice to the public it claims to represent.

Not that you would probably desire it, but personally I regret that this letter is far too long to print. I'd like to see a more active stance taken in support of policemen who suffer at the hands of malicious civilian groups. These cops may be few now, but their numbers will grow.

Sincerely
Esther L. Clark
638 Gorham St.
Newmarket, Ont. L3Y 1L4

Dear Editor:

I must let you know how amused I felt after reading the recent letter published by MARSHALL SACK. I was tickled pink. The gall of the guy.

He claims he signed his name to a petition to Amnesty International on the behalf of a client. Who's he kidding.

He signed this letter as a "practicing criminal lawyer in Toronto", together with some 70 odd other lawyers, in his own name, not that of a client.

I don't suppose the prospect of a lucrative retainer by our association had any influence on his disclaimer.

As a lawyer, I can only assume Mr. Sack carefully read the letter to Amnesty, concurred with it, weighed the pros and cons, then signed it. A disclaimer at this stage is of little value.

Mr. Sack should confine his mitigating circumstances, explanations and tales of misfortune to the Bench, where they are more likely to be believed.

While he may have credibility before the Courts and with Criminals, he has none with this reader.

Graham Long

PAGE SEVEN

RVICES

FEB. 1986 p. 20

by David Carter

Remember: "Common sense is not so Common" I can be reached at 491-4301 or 235-7167 (pager)

Public Complaint Commission

One of our uniform members brought forth a suggestion which I personally thought was an excellent idea. The idea was that any member being investigated by the Public Complaint Commission investigators have the investigation take place here at the Association Building.

We have a board room at the Association with plenty of seating space and a built in tape recorder, which could prove very useful.

Any members who the investigators of the Commission wish to talk to, please give me a call and I will arrange a meeting. Always remember not to say anything, unless you want to, to these people. But if you do meet with them, at least you will know the questions.

Dear David:

For some reason or another, don't ask me why, I have a terrible problem paying my bills. I get my pay cheque and I've spent it before I've paid my debts. Can I get help for this problem.

RR

Dear R.R.

Yes you can get counselling through the E.A.P. (Employee Assistance Program) located at 365 Bay Street (365-0738). E.A.P. is in the strictest of confidence. Read News and Views (January issue, page 31) and it should inform you of this.

David

Dear David:

I have been married for five years and I must say, very happily.

My wife, Emmie, has always been interested in politics ever since she was a child. She now belongs to a political party group which meets every Thursday evening. I believe in political activities just as Emmie does and urge her to participate as much as she possibly can.

Although, one incident that happened every Sunday afternoon during the summer of 1985, which puzzled me, was that my wife and political companions would have their discussions in the nude.

Is this a healthy practice?

Jeff E.

Dear Jeff:

They are only airing their differences.

David

Dear David:

January 1, 1986 is a statutory holiday and falls in the middle of my working week. Do I have to take this day, or can I take it later?

John Z.

Dear John:

You must take the stat. on the day unless you and your Unit Commander have another mutual agreement.

David

Malabar Costumes

Every now and again, an act of kindness takes place and it usually comes from the least expected quarters.

On December 16, 1985, we (the staff) had our Christmas Dance. I was father Christmas and Don Courts was my helper. Don being a miniature size, had a problem getting in his Santa's helper costume.

MALABAR Costumes, 14 McCaul Street, came to our rescue. Not only did they supply a perfect fitted costume—it was free of charge. This was very kind of Mark Matton of Malabar's. Malabars has a wide variety of costumes for rent.

METROPOLITAN TORONTO POLICE 22ND ANNUAL HOLY COMMUNION & BREAKFAST MASS

AT

**St. Michael's
Cathedral**

**SUNDAY,
FEBRUARY 23, 1986
9:00 A.M.**

*Breakfast to Follow At
The Downtown
Holiday Inn
89 Chestnut Street
Ticket Price \$5.00*

For Tickets
Contact Your Unit
Representative



Call... **267-4631**
5%

DISCOUNT FOR ALL
M.T.P.A. MEMBERS, THEIR FAMILIES & FRIENDS
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Birkdale Travel is now managed by Liz Walkeden and Karen McGarvey.

FEB. 1976

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undermines morale and public confidence; and

- * homosexual members are excluded for their own protection but the Commission claimed that the arguments of the RCMP and the Armed Forces did not justify their present policies and are based on the stereotypical view of homosexuals that assumes them to be dangerous people imposing their sexual preference on others. The Commission recommended that the Canadian Armed Forces and the RCMP bring their employment practices into conformity with the Canadian Human Rights Act as amended to prohibit discrimination on the basis of sexual orientation.

Feminists

Feminist groups made a huge impact on the Commission. Many people think that these groups want *equal pay for equal work*. People go along with this idea. It's already in our provincial laws. But this is not what the feminists are seeking. They want *equal pay for work of equal value*, which is completely different. The feminists argue that *equal pay for work of equal value* is needed because many women work in jobs where there are few if any men to make wage comparisons.

This involves judging the worth of different jobs and putting a price tag on them. It involves heavy bureaucratic manipulation of the Canadian economy. It is basic to communist economies. In many Soviet Republics, miners receive the same pay as doctors. Someone may judge whether the work of a female computer analyst is equal in value to that of a fireman? Is the work of a female receptionist equal in value to that of the man who drives a front-end loader? The comparisons are endless.

The Canadian Human Rights Act, (1978) sec 11 states: It is discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of *equal value*.

This Section only covers the federal public service, Crown corporations and firms whose operations are largely regulated by the federal government such as Bell Canada. The cost and consequences of applying this Act to the private sector has yet to be determined.

A new government bureaucracy would have to be organized so that bureaucrats

could decide which groups would receive equal pay. The long range impact on the private sector seems to be irrelevant to the feminists.

Mandatory Retirement

Retirement at age 65 is "age" discrimination under Section 15 of the Charter. Some people may want to stay until they are 75 or 85 or even 95. The aging trend in the Police Department will increase dramatically. This will reduce the opportunities for younger workers. In twenty U.S. states, which account for close to half the U.S. workforce, mandatory retirement at any age has been abolished in either or both the public and private sectors. The Commission came to the conclusion that an employer has the option of introducing a system of performance testing for all employees that would select out those no longer capable of doing the job. Such a scheme would not offend the Canadian Human Rights Act if the testing standards were reasonable in relation to the essential requirements of the job. The Commission recommended that mandatory retirement be abolished.

Immigration

The Canadian Ethnocultural Council recommended changes to the Immigration Act. They want discretionary powers taken from immigration officials. Witnesses appeared with submissions about the requirement that immigrants not place an excessive demand on health or social services. They claimed that this caused many immigrants to be refused admission to Canada.

The Committee concluded that the medical standards for admission to Canada should be relaxed and made flexible. They also recommended that those who had been in common law relationships should be admitted to Canada as an accompanying dependent or may be sponsored for admission to Canada by his or her common law spouse. They recommended that adopted children, notwithstanding the age at which they were adopted, be allowed to join a parent in Canada and that the preference in favour of Canadians in job competitions in the public service be eliminated.

If the recommendations of the Committee become law, it is apparent that this is then a system by which we can influence future changes to our laws.

And although it is necessary for the police to be politically neutral, these limitations should not prevent our Association from thinking, discussing or forwarding submissions to these commissions. The RCMP did it. Many of these issues may not appear to be police matters but they may eventually influence everything we do in the police department. It may influence the age you retire or the obvious "sexual orientation" of your partner on the midnight shift.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communications;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

There are many other rights such as Democratic Rights, Mobility Rights, Legal Rights and Equality Rights. Section 12 of the Legal Rights reads: *Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.* The Public Complaints Commission was probably not thinking of this section when they ordered that Constable Terrence Weller be fired by Christmas just because he insisted he was innocent.

It Happened in Philadelphia

The Philadelphia Police Advisory Board, similar to our Public Complaints Commission, was the first civilian complaint board in the U.S. This Board caused such controversy that it was stripped of its power to discipline police in 1966. And in 1969 it was abolished by Mayor Tate.

What's in Our Future?

Our Provincial Government may eventually realize that "we the people" have many laws that do not conform to the Charter of Rights. Testing these issues through the courts and waiting for each painstaking decision, will take years and money. Lawyers will get rich. A Provincial Equality Rights Committee could short-circuit these years of waiting and make the recommendations immediately. Such a committee could examine all provincial laws such as the Police Act and Rules and Regulations which govern

continued

March 1986 p. 39

MEMBER SERVICES

by Don Courts

Civilian Negotiations

As you are aware, the Civilian Arbitration Award was handed down on February 18th by the arbitrator, Martin Teplitsky.

Although we were unable to get some of our major concerns, such as a paid lunch period for straight day workers, the overall award is not too bad. Paul Walter has explained everything in his column. If you have any questions or need any clarification on any item, please call me.

As a matter of interest, the city workers covered by CUPE Locals 43 and 79 received an increase of 8.50% over the 1985-86 period while we received a 7.75% increase over the same period.

Discipline

I have been getting a lot of calls from members who have been documented for various reasons. In some cases, the members have been suspended. In order that we can have some control over what is happening and ensure that the documentations and suspensions are justified, we need to know about them. I would like to advise you about what could happen to you in the future if you accept an unjustified suspension now. For your own protection, please call me.

Parking—New Headquarters

I know there is a growing concern about parking amongst the civilian members who will be moving to the new headquarters once it is built. I have written to the Commission and received a letter back from them suggesting this matter be put to the joint Force/Association Facilities Committee, which we have agreed to do. David Carter and I will be dealing with this matter. I will report back to you at a later date.

Citizen Complaints

I have been receiving calls from civilian members, who are being asked to give a statement to the Public Complaints Bureau. Our advice to you is the same as we are giving to the uniform members. If you are asked for a written statement simply state, "On the advice of my counsel, I have nothing to say." If you are contacted by an investigator from the Public Complaints Commissioner's Office regarding an investigation or interview, state that you want to talk to an Association representative right away and contact David Carter or myself.

If they want to set up a meeting with you, we can arrange to have it here at the building. If you go into work one day and an investigator is there to talk to you, you are compelled to go into a room with him, if ordered to do so, but for every question the investigator asks you simply state, "On the advice of my counsel, I have nothing to say." You are allowed to have an Association representative with you at that meeting and make sure you do. The investigator might try and come across as a nice guy who is really only trying to help you out. Please, for every question he asks you, simply state, "On the advice of my counsel, I have nothing to say." He will soon get the message (hopefully) and leave. If they then require you to attend a hearing, they will subpoena you. At that stage, contact David Carter or myself for further advice.

Because this procedure can have serious implications, we advise you to contact us at the first stage you are being asked to give a statement. Please contact me or David Carter if any civilian or uniform member has any questions.

1986 Picnic

David Carter and I are looking after this year's Annual Picnic. We have Olympic Island (same spot as last year) booked

for Wednesday, July 9th. Don't be disappointed. Plan now to attend.

Job Evaluation

Monday, February 10th was the final meeting of the Grading Committee. All the positions have now been graded. The Commission is now comparing the salaries of some benchmark jobs with the salaries of similar positions elsewhere.

Surprising to me was the fact the Commission Bargaining Committee never mentioned job evaluation during negotiations, mediation or arbitration. So at this stage, we just do not know what the Commission will be proposing to us regarding the results and possible implementation of the study.

We will be starting the Units B & C evaluation this month.

Medical Bureau

I have been getting calls from members who have been told to report to Dr. Hancock's office for various reasons and wanting to know if an Association representative could be in attendance. David Carter and I have attended with numerous members in the past. We would be only too glad to attend with you, if the need arises.

Farewell/Appreciation Evening

The Board of Directors is sponsoring a Farewell/Appreciation Night for three former members of the Board of Directors—Jim Hermanus and Chris Southgate, who retired immediately after leaving the Board, and Art Gibbs, who has served this membership well for a long period of time. This event will be held on Thursday, April 10th at the Association building. Dinner will be roast prime rib of beef du jus. Tickets are \$20.00 per person. Phone Marg Turner at 491-4301 for tickets.

12 DIVISION REUNION—1953-1986

Is Coming Along Very Well — The Date is

May 23rd, 1986

at the

QUEENS WAY LIONS CLUB

3 Queensway Lions Court, Westwood Room

6 p.m.—1 a.m.

The cost will be \$13.00 per person

A superb Hot & Cold Buffet Supper will be served and a memento of the occasion supplied. There is no operating capital to draw on, so would all members planning to attend, FORWARD cheques made out to "Reunion Account" to P.C. R. Thomson, 12 Division, A.S.A.P. As of February 6th, there are just over 100 tickets been requested. Please do not leave it to late. If you haven't confirmed your ticket, DO IT NOW!

Pass the Word.

LETTERS TO THE EDITOR

APA. 1986 p. 6

All Letters MUST be signed, name will be withheld upon request

To the Editor and Members:

It is with a great deal of dismay that I find I must defend both myself and the Association Executive from comments contained in the letter from Esther Clark, wife of P.C. Lorne Clark, that appeared in the February News and Views.

In her letter, Mrs. Clark claims that her husband received no official support on the part of the Police Association and that I told Lorne "You're on your own". Both statements are a deliberate falsehood on her part or she really was not informed as to what transpired in a meeting between Lorne Clark and myself.

Lorne Clark attended at the Association Building on July 24, 1985 and at that time I spent some time with him, as I was replacing Chris Southgate who was on holidays. I explained to Lorne that for the Criminal charges, he must apply to the Commission for Legal Indemnification as provided in Article 23:01 of the Uniform Working Agreement. All he had to do was to attend at Staff Counselling and select a lawyer from a list of approved counsel and the Commission would cover the cost up front, of course, if he was convicted then he might be liable for the legal fees.

The issue of Legal Indemnification was finally obtained as a benefit to our members after a battle that was fought by the Durham Region Police Association with the financial and moral support of our Association.

Lorne had another option. He could ignore the provisions of the Working Agreement and go out and hire his own lawyer if he wasn't satisfied with what was available through Staff Counselling. BUT, he would have to bear the cost up front himself and hope that he could recover the costs later from the Commission. A Commission who we know have tried to weasel out of their responsibility in the past. I am not saying that the current Board of Commissioners would not pay up, but it has happened in the past.

All of these facts were related to Lorne and he was told that if he felt uncomfortable I would attend at Staff Counselling with him.

At the same meeting Lorne was asked to sign an application for Legal Indemnification for the Police Act Charges that were laid as a result of the Criminal Charges. Lorne did sign the application and Legal representatives would have been provided if necessary, for the Police Act Charges.

At no time was Lorne told "You're on

your own". I would expect any member who had that said to them to go before the General Membership and under the Provisions of the Constitution have the Director turfed out.

I have never used those four words and I have never heard anyone on the Executive say them.

Fraternally
Stew Udall

Editors Note:

In the future any letter to be published with a member specifically named in it, will be held back until the member named has an opportunity to see the letter and submit a response to be printed with the original letter.

Dear Editor:

I wish to express my sincere thanks and appreciation to the Executive, members of the MTPA, and the members of Division 21 for their thoughtful gifts and good wishes during my recent illness. Special thanks to Rev. Jones and PCO Monitor Alston Roberts.

P.C.O. F. Allen Pickering

Dear Doug:

Everybody knows that policemen and policemen's well-wishers don't think much of parole boards and bail reform acts and now some juvenile offenders thing. WE ALL KNOW THAT, but the News & Views keeps coming up with more stuff beating this poor old dead horse, the latest recruit in the January issue being a criminal court judge.

So, here I am again putting things straight (probably in vain): it has been felt for quite a while now (about 2,000 years more or less) that people who commit offences against the public good (and are caught) are losers, and since any community is better off without losers, it is considered worthwhile to do the best they can to help people not to be losers.

I hope this is the end of it.

Yours, etc.,
Ken Peglar

Dear Doug:

An interesting letter from Mrs. Clarke in the Feb. issue. She's on the horns of a familiar dilemma—in spite of everything that has been said, the Association just can't be all things to everybody and senior officers have always been a problem.

At the risk of offering advice, I would suggest that Clarke get on steady nights for a stretch and begin an honour course in looking out for No. 1. Even the Good Lord was an advocate of enlighten-

ed self-interest and on nights, he'll be far removed from the experts.*

It always seems to me to be a source of satisfaction somehow when somebody is complaining and I still say that whenever your resignation is demanded, it should go in your file—on the credit side.

I notice that you have once again given Bredin free rein and two pages to belabour the obvious.

Yours etc.,
Ken Peglar

*The night shift has other advantages.

Dear Editor,

I am writing this letter to echo the views brought up in Mrs. Clark's letter in the February 1986 issue. I too am married to a police officer who was raked over the coals by the Citizens Complaints Bureau. I agree with her feelings regarding all her views on this matter, especially on family pressure.

I also feel that it is time the MTPA came forward and did something more substantial for these officers. The lawyer recommended by the MTPA had more or less given up once he found out who the members of the Board hearing the case would be.

My husband's situation was involving a well known violent pimp, with a long record who had hospitalized an RCMP officer prior to arrest. While arresting this 6 ft. 3 in., 250 pound individual (my husband and partner are approximately 180 lbs. each) some force was needed to restrain his violent behaviour. When are these people going to open their eyes and realize that when confronted with violence that violence by the Police is sometimes the only means of retaining their good health. Let the real courts weight any excess. I might note that my husband and his partner perform their jobs diligently.

Why, when one civilian charges another they would have to take it to a proper court of law, with real lawyers and judges? What makes this rule and different for our officers? If a civilian wants to press charges against an officer let him go through the proper court system. Not this Kangaroo Court called the Citizens Complaints Bureau where their "Judges" have no concept of the problems encountered in Policing. I am not a C.A. and I am sure that the Government of Ontario would not hire me to do their audit. One cannot do a proper job on something they know nothing or very little about.

(Continued on page 38)

Letters to Editor

(Continued from page 6)

Another unanswered question is why did it take almost two years before they were advised that this complaint would be going in front of the Board. This is hardly the right to an expedient trial.

Regarding Mrs. Clark's mention about the Media, how right she is there. The public should be aware of what our police officers are being subject to.

We have a damn good police department here, but how can we possibly believe that they are out there doing their jobs 100% with the threat of the Citizens Complaint Bureau "Charge" hanging over their heads. Don't they have enough job pressures without this?

Yours truly,
Catherine Morin

Dear Constable Murphy,

My name is James Volling and I am ten years old. I am writing to tell you how thankful I am for you and the work that you do. I never realized all the responsibilities that you have for the benefit of me and my family.

Thank you for your kindness in taking us on the educational tour of your police station. I wish to express my gratitude for your protection. Your courage and bravery are admirable. I am grateful for Christian policemen.

It was very interesting to see the horses and to learn about their purpose and use.

I was amazed to see so many different rooms for photography identifying suspects, firing range and prison cells.

Thank you for answering all of our questions and for your helpful information.

An informed citizen can better appreciate the benefits and services we receive from dedicated people such as yourself.

Sincerely
James Volling

Dear Doug:

After reading the article written by the wife of a fellow officer and member of OUR Association, I was shocked. Where was the Association, and why are his legal costs not covered? I was always led to believe that the Association would be right there providing the moral and financial support necessary to clear a member of such an allegation. I was obviously wrong. Is that not part of what we pay

for in our dues? If you won't support us, who will?

I would think that the situation given would have been the perfect opportunity to let the public know what we (the police) are often faced with when attempting to perform our duties.

It is things like this that bring the morale of the force down, as it seems as if we are faced with a "Damned if you do and Damned if you don't" situation. We break up a fight and face a criminal charge, or we choose to ignore it and face a charge of neglect by the department.

We just can't win!

Let's let the public know how a member of CIRPA and his wife convinced a boy to make a false allegation against a police officer, which in turn cost the tax payers thousands of dollars to take the case through the criminal courts. Not to mention the costs incurred by the officer to defend himself. While we are at it, let's start some proceedings against the boy as it is obvious that he knew what he was doing. Let's not just sit there and take this abuse, let's do something about it.

Members should be reimbursed for the level costs when acquitted, and in cases such as this where there is evidence to prove a false allegation, charges should be laid, or a public

apology should be requested through the media from the person or persons responsible. Particularly if they belong to CIRPA, or any other Anti-Police group.

We are a large STRONG Association, so let's start fighting back like one!

Fraternally Yours

Jim Tranter

P.C. #459, 31 Division

Editors Note:

The staff of the News & Views would like to apologize to Jill Fairbrother of our catering staff for omitting her last name in the P.C. Richard Wills letter of Thanks in the March issue. Our apologies are also extended to P.C. Wills for not updating his letter properly by including Ms. Fairbrother's last name as expected.

Uniform Services

Continued

mons that I was moving. His reply: "Too late, I have written the licence number down." I introduced myself. Cadet Simmons replied, quite rightly so, "I have a job to do".

Cadet Simmons, #657, it is a pleasure to meet such dedicated members of the Force and Toronto can feel very proud of having an officer of your calibre serving them. Yes, you do have a job to do; and also, I have a job to do. Welcome to the BROTHERHOOD.



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UNIFORM SERVICES

by David Carter

REMEMBER: "Common Sense is not so Common!"
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Public Complaints Commission Trials

In a great many of the cases where an officer is found guilty of misconduct, the panels give considerable weight to the following problems:

- Officers contradicting each other
 - Officers are not well prepared
 - Officers are not familiar with their evidence
- Officers should ensure that they are better prepared in giving evidence.

Workers' Compensation Board

If a member receives an injury, however slight, or acquires a job-related illness while on duty, he is required to:

- Notify a supervisor of the nature and circumstances of the injury
- Seek medical attention in order to have medical verification of injury

Dear David:

Last Thursday I went to the Police Credit Union for a loan. Well, that will be the last time I will deal with the Credit Union.

First of all, I don't like having to beg for a loan, and second, I don't like the way I'm treated by the Loans Officer. The looks and questions you get from these people makes one feel like crawling under the table or running out of the office with embarrassment.

David, they know what I earn. I have never defaulted on payments and if they feel I'm going to quit my job and run for \$9,000.00 they should think again.

John G.

Dear John:

I know exactly how you feel. I'm treated the same way. Why we, the members, should have to be embarrassed, made to feel like one is begging, and subjected to humiliation when trying to get a loan, I will never know.

I personally won't go to the Credit Union again for a loan.

Another incident I had with them:—I pay my mortgage through a chequing account with them. I was \$26.14 overdrawn on this cheque. At 12:10 p.m. I called them to enquire about my statement. The Credit Union gave me until 3:00 p.m. to pay. After an argument, I was given to the next day. I also have never defaulted in payments. (I checked my credit rating on Bloor St. W. and was told 'excellent'.)

If any other members have a complaint about the M.T.P.C.U., please contact me.

David

Dear David:

I'm 25 years old, working in the Intelligence Unit and very happy with the way my career is going. My problem is, although I work in the Intelligence Bureau, I know very little about the facts of life. Next month I'm getting married to a very nice girl, but we don't want children. If we sleep in different beds, would that solve my dilemma?

Joe J.

Dear Joe:

Inconceivable!

Dear David:

Last year I had an accident while on duty injuring my wrist. I was off work for four days. I never filled in the Workers' Compensation Board report at the time of the accident. Now I'm having problems getting W.C.B. to cover my four days.

Harry L.

Dear Harry:

Always remember, when you are off I.O.D., W.C.B. reports must be submitted either by you or the Officer in Charge immediately to get a satisfactory settlement by the Board.

David

Dear David:

In March 1985 I started a small business venture in landscaping. I went by Regulations and submitted a report to the Chief stating my intentions. Three months later I received a reply from the Chief's Office stating 'no' because of my sick record. I agree it is better to sit at home and drink beers than go and do something constructive like garden landscaping.

Bo. D.

Dear Bo:

By the next issue of the News & Views, I hope to have more research into the

subject. This is my advice: The less you let the Department know, the better. Personally, I recommend using the wife's name if possible to have the business under. Refusing a person a second calling because of their sick record is very unfair, if not illegal.

David

Dear Dave:

You have been of great help through my problems with the department management. Even though I have resigned after 10 years of service in 52 Division, thanks to you I can leave holding my head high and proud of my contribution to Police service.

I do hope that I will be able to use the facilities of the Police Association as I still and always will consider myself as one of the men in blue, and will still serve the public in a civilian manner.

It is with mixed emotions that I leave the fold, but feel that is the best move to make considering family, financial, and emotional progress caused indirectly or directly by serving the public these ten years.

I feel that the job has changed greatly and the internal pressure on a P.C. for more work and compliance to outdated rules while being left responsible civilly and criminally to do the bidding of the department to accomplish an impossible job, is worth a lot more than 37.5 yearly. I believe the front line men should be paid higher than the protected controllers.

Once again, I'll never forget your help and assistance.

Sincerely
Geoff Ellis

Dear Geoff:

Thank you for your letter. Best of luck in your new career at Erinwood Motors. (Geoff is now a Ford car salesman).

David

Brotherhood

Last week I had to attend downtown regarding a member. I parked my auto on a side street. I was standing approximately twenty-five feet from the rear of the auto talking to a citizen when Cadet Simmons, #657, approached my auto. I immediately called over to Cadet Sim-

(Continued on page 38)

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THE PRESIDENT'S MESSAGE

by Paul Walter

Citizen Complaints Statements

The perplexing question of statements under the *Complaints Act* is fast coming to a boil. Since the inception of the complaints process, the requirement for statements to be given by subject and witness officers has caused the membership and the Association's Board of Directors a great deal of concern. The right to remain silent, which is a cornerstone of the criminal justice system, is thought in some quarters not to apply when an officer is accused by a citizen of criminal or other misconduct under the *Complaints Act*. This is fundamentally unfair.

To strike back at a system devoid of procedural safeguards, the Association, in November, 1985, advised members, whether they be the subject of a complaint or merely a witness, to state "On the advice of my counsel, I have nothing to say." Meetings were also held with Command Officers and the Police Complaints Commissioner to address this and other issues but no agreement could be reached.

A recent development has caused the Association to adopt a change of tactics in fighting for and protecting its members' rights. In mid-May, a memo went from Deputy Chief McCormack to the officer in charge of the Complaints Bureau stating that witness officers are obliged "by virtue of their office, to submit statements as witnesses and in this manner the investigations should be completed." The memo further suggests that if an officer refuses to make a statement "a breach of regulations can be envisioned." We think not! First, what's fair about requiring a witness officer to make a statement which might be used against him later as a subject officer? Secondly, where's the justice in saying to an officer, "If you don't put yourself in a position in which you could incriminate yourself, we're going to punish you under the *Police Act*"?

It is now the position of the Association and its counsel that a witness statement should be given only if the Chief undertakes that the statement will not come back to haunt the witness. The consensus of the Board of Directors is that any witness officer who is asked for a statement should write to the Chief as follows:

Dear Sir;

RE: REQUEST FOR A STATEMENT

I have received a request for a citizens complaint investigation statement. With respect, I must request from you or your designate confirmation in writing that this statement will not be used against me as the subject of any criminal, civil, Police Act or Citizen Complaint proceeding. Until I have received such confirmation I have the right not to make any further statement therefore, on the advice of my counsel, I have nothing further to say at this time.

Respectfully submitted.

Counsel has advised that this is "a more than adequate interim measure which may be employed for the protection of your members." The measure is interim to the extent that further legal research may dictate modifications to the response quoted above. You will be immediately notified of any changes that may be forthcoming.

The Association also has legal precedent on its side under the *Charter*. In a case tried in Saskatchewan, objection was taken to a provision of the *Combines Investigation Act* which authorized a member of the Restrictive Trade Practices Commission to order the examination, under oath, of anyone in Canada and to compel such person to produce relevant documents. This power was held to violate the *Charter's* section 7 guarantee that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." The court reasoned that, notwithstanding that other sections of the *Charter* deal expressly with self-incrimination (and, arguably, apply to subject and witness officers in Toronto), there was no reason not to give a wider protection against self-incrimination under s.7: "...the phrase 'security of the person' includes a right to personal dignity and a right to an area of privacy and individual sovereignty into which the State must not make arbitrary and unjustified intrusions." The court found it repugnant that the provision in the *Combines Act* compelled a person to assist in an investigation of his own misconduct. That a police officer should have to do this is equally odious.

To summarize, the Association is continuing its fight to ensure that principles of fundamental justice are applied to its members. If any one of you becomes a witness officer, stand up for your constitutional rights by writing to the Chief in the form outlined above. If you become a subject officer, exercise your right to remain silent and state, "On the advice of my counsel, I have nothing to say."

Paul Walter

Aug. 1986 p.3

THE PRESIDENT'S MESSAGE

by Paul Walter

Police Act Disciplinary Proceedings not Covered by Section 11 of the Charter Says Appeal Court

In a unanimous decision released on July 2, 1986, the Ontario Court of Appeal ruled that s.11(d) of the Canadian Charter of Rights and Freedoms does not apply to disciplinary proceedings under the *Police Act* Regulations. The Court also ruled that the *Charter's* right against double jeopardy, contained in s.11(h) does not apply to prevent a police officer from being charged both criminally and under the *Police Act* on the same set of facts.

The applicable sections of the *Charter* read as follows:

11. Any person charged with an offence has the right

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again;

The case in which these determinations were made involved three officers on the Metro Toronto Force who were variously charged under the *Police Act* with discreditable conduct and neglect of duty, an officer of the Durham Regional Force who was charged with neglect of duty and insubordination and a member of the Niagara Regional Force who, in addition to having been granted a conditional discharge on a criminal charge of theft over \$200, was charged under the *Police Act* with corrupt practice and discreditable conduct.

The central issue that arose in the case was whether or not a police officer who is charged with an offence against discipline under the *Police Act* Regulations is "charged with an offence" within the meaning of the opening words of s.11 of the *Charter*. It was argued on behalf of all the officers that the *Charter* applied and that the *Charter* requirement for a fair and public hearing by an independent and impartial tribunal was not met; the Chief or his designate controls the commencement of the disciplinary proceedings, the Chief designates the person to conduct the hearing against the officer charged and the Chief or his designate acts as the presiding officer who decides the case. In other words, it was argued that the Police Force both charges and tries the person charged in violation of the *Charter's* requirement for a fair hearing by an impartial tribunal. On behalf of the officer charged under both the *Police Act* and the *Criminal Code*, it was argued that being charged twice violated the *Charter's* guarantee against double jeopardy.

The Court sidestepped the issues of whether or not *Police Act* disciplinary proceedings are fair and impartial and whether or not double jeopardy applied by ruling that an offence against discipline under the *Police Act* Regulations is not an offence to which Section 11 of the *Charter* applies.

In support of this reasoning, Mr. Justice Morden, speaking for the entire Court of Appeal, began his analysis by defining the word "offence" to mean "a breach of law involving penal sanction". Having adopted this definition, he was forced to decide whether it extended to "all kinds of legislatively prohibited conduct involving the imposition of what may be called a penalty". In addressing this issue, Mr. Justice Morden looked at s.11 of the *Charter* as a whole, noting that it was full of criminal law terminology. He also reviewed its legislative history and concluded that s.11 applied only to offences under the *Criminal Code* and under quasi-criminal provincial legislation. He further ruled that police discipline was analogous to professional discipline applicable to lawyers and doctors where the Courts have already ruled that s.11 of the *Charter* does not apply. The following extracts from the decision clarify his reasoning:

In applying the criminal or penal proceeding formula I think that the major factor to consider is the nature and purpose of the consequences to which a person can be subject in the proceedings to which it sought to apply s.11. In this respect, I think that it is reasonably clear that the underlying purpose of s.11 is to guarantee that the basic criminal law safeguards set forth in it should apply to proceedings by the government against a person that can result in punishment of a criminal law kind, such as the deprivation of liberty in the form of imprisonment or some lesser form, such as probations or the payment of a fine.

In my view, a *Police Act* discipline proceeding is not a criminal or penal proceeding within the purview of s.11. The most serious consequence that can befall a police officer in such proceedings is the loss of his or her position and, while I do not minimize the seriousness of this consequence, it is a civil consequence and not punishment of a criminal nature. A police discipline matter is a purely administrative internal process. Its most serious possible consequence makes it analogous to a discipline matter in ordinary employer/employee relationships, even though the procedure governing it is clearly more formal. The basic object of dismissing an employee is not to punish him or her in the usual sense of this word (to deter or reform or, possibly, to exact some form of modern retribution) but rather, to rid the employer of the burden of an employee who has shown that he or she is not fit to remain an employee.

Still in the realm of analogies and accepting that there may be some distinctions, I think that police disciplinary proceedings are much closer to professional disciplinary proceedings than to ordinary prosecutions and, as I have indicated earlier, the case law with respect to professional disciplinary proceedings is now uniformly to the effect that they are not subject to s.11.

In response to the argument raised by counsel for the police officers that the terminology associated with *Police Act* discipline is of a decidedly criminal nature, employing such words as "charged", "offence", "tried", "found guilty" and "punished", the Court stated that there are other aspects of the discipline which would nevertheless tend to suggest that an offence under the *Police Act* regulations is not an offence under s.11 of the *Charter*. For example, the Court mentioned that in *Police Act* disciplinary proceedings findings of fact are made according to the civil burden of proof and not according to the higher standard of proof, beyond a reasonable doubt, which applies to criminal and provincial offences. The Court also pointed out that similar terminology is used, for example, in the *Health Disciplines Act* which applies to members of the medical profession and in the *Law Society Act*. Additionally, the Court stated that punishment under the *Police Act* can be avoided by resignation from the Force and this emphasized that police discipline is for the benefit of the Force rather than for punishment of the individual. Finally, the Court was not prepared to accept that a forfeiture of pay or leave or days off was comparable to a fine. In conclusion the Court stated:

In light of the foregoing, and giving particular weight to the voluntary, domestic government, nature of *Police Act* discipline proceedings and to the fact that their most serious potential consequence is dismissal, essentially a civil consequence, it is my view that these proceedings are not within the scope of s.11 of the *Charter*.

I do not seek to minimize the potentially serious consequences of these, and many other kinds of discipline proceedings, or suggest that they should not be attended by appropriate procedural safeguards. In fact, police discipline proceedings are governed by a detailed code of procedure, supplemented, unless expressly excluded, by the rules of natural justice.

Needless to say, the Association is not happy with this decision and is evaluating the likelihood of being successful in seeking leave to appeal to the Supreme Court of Canada.

Paul Walter

THE VIEW FROM THE BOTTOM By Richard Hawkyard

The Management Mystique

There are dozens of management philosophies. From Hertzburg on down, the denizens of administrative expertise have expounded countless methods to be deployed by those in authority. At best, the giants of the industry have merely translated the thoughts of the ancients. At worst, they are guilty of plagiarism. Their disciples are mostly vapid individuals who lack the insight to realize that effective management is simply common sense. To quote from the Old Testament, which was popular long before the Dow-Jones hit the streets; "Do unto others as you would have them do unto you." It does not require seven years before the mast to reach such a basic conclusion.

A supervisor, in most cases, is one who has risen from the mass. Yesterday, they were down here slugging it out with the rest of us. Today, they're sporting a new suit, lording over us in an effort to satisfy those who rewarded their efforts by way of promotion. Usually, they fall into one of three categories:

1. One who has been adopted by a higher being. Though lacking in skills and knowledge, has succeeded by way of social climbing and/or emulation. Believes all subordinates to be untrustworthy and incapable children. Believes workers strive to function at lowest acceptable level of effort. Uses intimidation method of supervision, thus guaranteeing minimum efficiency.
2. One who subscribes to the teachings of an accredited guru. Achieved promotion through manipulation of work assignments, seeking contact with high echelon administrators. Displays sympathy and concern in presence of those left behind, but willing to sacrifice former ties for future consideration. Common tactic to display 'concerned parent' attitude. Considers subordinates an exploitable resource.
3. One who possesses natural leadership qualities. Not cognitive of 'class structure' within work environment, believing all employees to have equal significance within corporate objective. Promotes team-work attitude, thereby stimulating efficiency and encouraging co-operation. Considers needs of subordinates ahead of personal success.

The most effective supervisors are those in the third category. They are the people who get the best results, because they don't measure success in terms of authority. They participate, where possible, and resort to command only when necessary. They recognize individual talents, and assign functions to those who can best perform them. These are the people who easily handle emergencies because they have encouraged their subordinates to make decisions independent of supervision. They respect the dignity of those under them, and are respected in return. They do not take credit for the efforts of others, and they ac-

cept responsibility for the mistakes of the group. They care for the well being of those they administer to.

Quite simply, a good supervisor is one who recognizes that his success is directly attributable to those whom he supervises. If they do a good job, his superiors will be happy. Leadership is a quality, not a technique. Management is an ability, not a philosophy. The common complaint in executive offices is that the unions are ruining the world. The truth is the opposite. There are no bad unions, there are only bad managers. Unions are a response to the cruelty and indifference of management. As the old saying goes, if it ain't broke, don't fix it. Good management, honourably motivated, can render unions obsolete. A good supervisor is one who prepares those below him to take over his job. In a sense, a good supervisor should have a lot of spare time. When he has nothing left to do, he can be promoted.

Life in the End Zone

Mr. Clare Lewis is not my friend. Nor can he be said to be indifferent. It follows, therefore, that he has the potential to be my opponent. His function as Public Complaints Commissioner is to assist the public in seeking redress for police mis-conduct. He may well be, at this moment, considering an allegation made against me. He will not make a final judgement, nor will he pass sentence, but he will make a number of decisions likely to affect the outcome of a citizen's complaint. He will consider several issues, but his prime objective is to serve the public interest. Inasmuch as I am not, by definition, a member of the public, he does not have to concern himself with my point of view. In fact, he doesn't have to care about me at all. That's not what he's paid to do.

Mr. Lewis says that the ultimate goal of the P.C.C. is to provide better policing to the people who pay for it. He is the public's "quality control analyst". In simple terms, he wants to make you and me better cops. This is a noble and worthwhile ambition. Of course, if we don't measure up to whatever standards he applies, we can be dispensed with. He is the public's watchdog over you and me. There is an old saying about letting sleeping dogs lie. Keep in mind that most attacks come from behind.

Police are often referred to as the peace-time army. In theory, there are similarities in the two functions. In practise, they are poles apart. When an army marches into battle, their enemy has been declared beforehand. They know who the bad guys are supposed to be. They don't have to agonize over such intangibles as "reasonable and probable grounds". They do what is necessary to win. It is the losers who commit the war crimes.

When cops patrol the streets, they don't

know who the bad guys are. Bank robbers and drug dealers and rapists and thieves don't wear uniforms. Cops do. The 'enemy' is often our neighbour, or his kid. Like soldiers, cops have a 'duty' to perform. There are as many levels of authority in the police hierarchy as in the military. Unlike the army, however, we have legions of armchair generals to contend with. There are politicians, community leaders, special interest groups, media, lawyers, judges, tax-payers and even criminals, all shouting orders from the sidelines. Each and every one of them can bring pressure to bear against us. Some days, the noise is so loud that I want to step back from the line, like pro quarterbacks are often forced to do. I can't get the signals straight. Not only is it hard to figure out who is on the other team, I don't know who's calling the shots for mine.

Maybe that is why a lot of cops are switching from offence to defence. They're tired of being clipped from behind or having the ball called back. The defence has a tough job, but they have little trouble discerning the opposition. Instead of breaking our heads trying to fight through the line, we're waiting to see who runs for the end zone. Why knock myself out trying to put a few points on the scoreboard? I have no stake in the outcome. It's the public who win and lose; my only concern should be how well I played the game. Right, Mr. Lewis?

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EDITORIAL By Doug Ramsey

TICKET FIXING

An eye-catching headline, isn't it? Our local newspapers of late seemed to think so as well. Hardly a day went by for well over a week when we didn't find a story concerning the events surrounding PC Williamson's brush with one of our fair citizens and our beloved Senior Brass.

When the initial story broke in the papers, I don't think there was anyone more surprised than John W—the man in the middle of this controversy. He began his search for proper justice in a quiet and relatively obscure manner without the intention of making this sordid affair public. While the events were serious in nature, a public scandal involving the Force was neither necessary nor desirable. However, as luck would have it, someone somewhere thought otherwise and the results are evident to all of us.

As a fellow police officer, I cannot help but feel somehow tainted by this whole affair. While the first two or three newspaper articles reported the facts as then known, subsequent articles took on a new vein as the powers that be began to close ranks and air their points of view to the media rather than just the facts. Somehow the situation changed from a general inquiry as to what is the proper procedure for members of the Force to follow when tickets are to be withdrawn for any reason into a rather ugly and distasteful tirade from various writers in several local papers. Right and wrong were no longer important—only who was going to be tagged as the scapegoat.

I guess we, as police officers, are naturally pessimistic but unless a proper inquiry takes place, I don't see much hope for PC Williamson. After all, Mr. Tucker is only a bit player at best in this whole affair or, at least as the papers tell the story, just an innocent citizen going about his business and being harassed by the omnipresent police. It certainly doesn't seem to matter to anyone concerned, other than to PC Williamson, that Mr. Tucker apparently committed three separate offences and was duly ticketed for them. We, as police officers, are often ridiculed for acting as judge, jury and executioner when we issue tickets, a view hotly contested not only by ourselves but by the Senior Officers themselves. We have read many an article where the Chief or the like has defended our position concerning the issuing of tickets and how it is not up to us to decide a person's guilt or innocence. That is for the Courts to do. Our job is to bring the accused before the Courts and present the facts as they pertain to the case. How many times have you heard the Court stop an accused cold at trial when he attempts to bring in evidence of misconduct? The accused is informed that complaints of misconduct are to be taken to the proper authorities, i.e. the Public Complaints Commission. The Court is only interested in facts pertaining to the charges before it.

As I see it, there was more than sufficient cause for PC Williamson to question the decision of the Senior Officers involved. Provincial Laws, Force Regulations and past practice all support PC Williamson's contention that the parties involved erred in their judgment.

The justice system should have been allowed to work, thus protecting the rights of all concerned. The Crown could have withdrawn the charges against Mr. Tucker if warranted and Mr. Tucker could obtain his "pound of flesh" at a Public Complaints Commission hearing if he could substantiate his allegations. Something, I might add, PC Williamson is not afraid to face.

To sum up my feelings in this matter, I think it is intolerable that the Force has chosen to protect a few senior officers who (at least in my opinion) erred badly rather than the public image of the Force and, more importantly, the morale and integrity of the rank and file who meet and deal with the public face to face on a daily basis. Your comments are invited.

D. Ramsey



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PRESIDENT'S MESSAGE By Paul Walter



PAUL WALTER
President

THE TUCKER AFFAIR

On November 25, 1986, at 2:15 in the morning, Gary Tucker went to 21 Division and complained to a Staff Sergeant about the manner in which a Metro Police Sergeant had smiled at him. Shortly after he left the station P.C. John Williamson issued him with three Provincial Offence Tickets. Tucker, who has a criminal record and is currently facing other criminal charges and who has made unsubstantiated allegations about police behaviour in the past, complained, as I understand it, to Deputy Chief Kerr that Williamson's actions amounted to harassment. On the very same day that the tickets were issued they were withdrawn by senior police management in a fashion which raises serious questions about the integrity of the administration of the criminal justice system.

So far as we at the Association can piece it together, the locked summons box was transported to Headquarters by an Inspector and handed over to a civilian supervisor, one of the few persons to possess a key, who was under orders to remove all the tickets from the box, find the three that were issued to Tucker, place the other tickets back in the box and re-lock it. This he did in the presence of the Inspector who then transported it back to 21 Division where it was picked up by a mail courier in the normal course of business. Completely by chance PC John Williamson learned of these clandestine goings-on and objected strenuously.

Given the cloak-and-dagger nature of what had happened and taking into account the provisions of Standing Order No. 37 which was issued following earlier charges of ticket-fixing to guide senior management and protect them from similar allegations in the future, the Association was of the view that the matter was sufficiently serious to warrant an investigation. In a letter of January 9, 1987 to the Attorney General, the Honourable Ian Scott, we requested "a comprehensive and independent investigation into all facets of this matter with a view to establishing what happen-

ed and whether or not the actions of anyone involved were improper." In the same letter I detailed four important questions that the Association considered were in need of an answer:

1. What precisely are the facts surrounding the withdrawal of the certificates of offence?
2. Is the situation involving the withdrawal of these certificates only an isolated incident?
3. Did the person or persons who withdrew the certificates of offence act outside the terms of the Metro Police Force's Standing Order No. 37... which allows members of the force holding the rank of Inspector or above to recommend their withdrawal but which clearly states that:

The decision to act upon a recommendation for withdrawal of a Provincial Offences Ticket remains a function of the office of the Crown Attorney. All recommendations for withdrawal will be submitted to the court under the signature of the Chief of Police.

4. Did the actions of the person or persons who withdrew the certificates amount to a violation of the *Provincial Offences Act*, R.S.O. 1980, c. 400 and, in particular, section 4 thereof which states:

A certificate of offence shall be filed in the office of the court named therein as soon as is practicable after service of the offence notice or summons.

My letter also stressed the need for the investigation to be completely independent since an "internal investigation by the Force itself would not be appropriate given the seriousness of the allegation and the possibility that the very persons who would be ultimately responsible for conducting it may be those whose actions have been called into question."

Regrettably, the Attorney General failed to take the bull by the horns. He replied as follows:

"The Solicitor General is charged by statute with the responsibility for the conduct of or the performance of duties by police officers. I have taken the liberty of referring your letter of January 9th, 1987, to him with the request that he consider initiating a review of this entire matter by the Ontario Police Commission."

While we, of course, must abide by the Attorney General's decision, we have serious reservations concerning an Ontario Police Commission inquiry, even assuming the Solicitor General initiates one. For many years, both your Association and the Police Association of Ontario have been unable to view the OPC as an impartial investigatory body since all its investigative staff formerly held the rank of Staff Inspector or above. As to them investigating the current situation, it must also be pointed out that the investigators themselves could very well turn out to be former colleagues of those from senior management whose actions would be investigated.

Even assuming an investigation was carried out independently, the unfortunate fact remains that any perception of independence would be sadly lacking. In an affair of this nature perception is every bit as important as reality. At a time when the morale of our members is already at an all-time low as a result of the public complaints system and other causes, whatever the facts of this matter really are, our members may well conclude that yet again they have failed to receive the support of their superior officers. Moreover, unless some action is taken in the face of what appears to be a clear violation by senior officers of Force procedures and the *Provincial Offences Act*, the message we are left with is that there is one set of rules for management and a separate set of rules for the rank and file. It is regrettable too that the citizens of Metropolitan Toronto are the ones who may ultimately suffer since many of their protectors may become even more disillusioned with policing as a career than they already are.

EDITORIAL By Doug Ramsey

On May 1, 1987, Art Gibbs retires from the Force. Few of our members have not been touched in some way or another by Art's endeavours on behalf of the membership. His tireless work as Monitor, Committee Member and Director of the MTPA has contributed in no small way to the strength the Association now enjoys. A list of Art's accomplishments appear on page . . . It has been a pleasure and a privilege to know and work with this fine man. Our best wishes for a long and happy retirement, Art.

The following is a letter received from Robert MacDonald, PC 6555 of 54 Division: "I am writing this letter after regaining my composure which broke down in anger and disgust when I read a recent newspaper item from the Office of the Public Complaints Commission. I refer to a display ad measuring 6-1/2" x 10" in the March 25th issue of the North York Mirror. I have been informed that this same ad also appeared in other local Metro area newspapers. The 1/2" tall lettering "IF YOU HAVE A COMPLAINT ABOUT THE METRO POLICE, WE'D LIKE TO HEAR ABOUT IT" turned my stomach when I read it over dinner last night. What the heck is going on? Appropriately enough, the ad was featured on the "What's Going On" section listing community events.

The only conclusion I can reach is that the Public Complaints Commissioner and his staff are worried about job layoffs through lack of work—or should I say lack of complaints? Has it not dawned on the well-educated, highly-paid administrators of that Commission that the apparent decrease in their workload might just be due to the fact that we're not all that bad a bunch of guys (and gals) after all? Could it just be that we are doing our jobs in such a way that leaves little room for complaint after all? Or is the image of a five and a half thousand member "goon squad" one which they wish to perpetuate?

Now I am not professing that we are all fly-white all the time and I will admit there is sometimes cause for complaint in some cases. However, there has always been provision for remedy and since this Complaints Commission was formed, even further provision. If I were to stretch my imagination, I could maybe even understand seeing a SMALL informative four square inch size ad just for those members of the public who have missed all the 6-o'clock news items in recent years which publicized the Commission and their available services, not to mention pamphlets and whatnot which have been circulated.

What I cannot fathom is this blatant form of advertisement which I interpret to be saying "Please, we need the work. Do come in or call to find out when we'll be in your area."—Yes, the ad actually said " . . . to find out when a representative . . . will be in your area."

It sounds just like some slick salesman trying to sell you something you don't want but they "just happen to be in your area". Come on—what next? Door-crasher specials? A "Complaint Video"? Midnight Madness offers? I know, why not copy a well known car rental company and tell the public that the Commission "wants their business so bad they'll pick them up and drive them to get it"?

I have never been one to get too upset with life's trials and tribulations on or off the job but this slap in the face was hard enough to move me to pen and paper. I would assume that every single officer, from the lowest to the highest ranks, will agree that these ads constitute one of the biggest insults against the integrity we have and against the efforts we put forward daily that has been seen in a very long time.

In an effort to combat fire with fire, I would respectfully suggest that as one step in the right direction the Association invests some of our money in featuring same size display ads BESIDE the Commission ads and have the same size print saying "IF YOU HAVE A COMPLIMENT ABOUT THE METRO POLICE, WE'D LIKE TO HEAR ABOUT IT."

Setting aside the fact of what I do for a living, I object to these ads even on the basis of being a taxpaying member of society. One 6-1/2" x 10" display ad in the North York Mirror costs \$525 for one publication. Even taking into account any discount for repeat business, multiply the number of ad times the number of newspapers that were paid to carry it and it doesn't take a mathematical genius to figure out we're talking probably of thousands of dollars of taxpayers' money being spent on these ads. An expensive investment into a make-work, employment generating venture.

I sincerely hope the Association Executive is not going to let such blatant public humiliation continue without any comment or action. The strongest protest should be raised with those who have allowed that kind of publication to be presented. In fact, maybe we should find out if the Commissioner was even aware of the type of ad that was being done. Could it be the case that the ad was designed by some hotshot government ad agency where the designer himself has not the faintest idea of what a police department OR a Complaints Commission is all about? If that were the case, then I am sure the correct approach and representation by the Executive to the Commissioner might put a stop to this nonsense before it gets out of hand.

Having said all this, my only concern now is that you will decide this letter is too lengthy to print—which would be a pity, because I believe every member of this Force should be made aware of exactly what these ads were like. Perhaps they too will be stirred enough to write the Association to either voice their own thoughts on the matter or just scribble a short note corroborating my own sentiments. It takes a little time to sit and write to an Editor and I have never done so before—but I just did now. The matter was important enough."

Why not do as PC MacDonald suggests and let us know how YOU feel about this subject?

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Articles received by the month will be published next month's is

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PRESIDENT'S MESSAGE By Paul Walter

June 1987
p.5



PAUL WALTER
President

If you have a complaint about the Metro Police, we'd like to hear about it.

1 We're the Office of the Public Complaints Commissioner. Should you have a complaint about a police officer on the Metropolitan Toronto Police Force, you can register it with us. We are an independent, civilian agency. You can be confident that your complaint will be investigated and dealt with fairly and impartially.

2 Complaints about Metropolitan Toronto Police officers may be made at: Any police station. The Public Complaints Investigation Bureau of the Police Department, 3900 Yonge Street (at Lawrence). The Office of the Public Complaints Commissioner, 157 Bloor Street West (at Avenue Road). By calling (416) 392-1111 to find out when a representative from the Office of the Public Complaints Commissioner will be in your area.



Chief of Police Commissioner



Attorney General (at 3900)

Apparently, some people think there hasn't been enough cop-bashing going on lately. I am referring, of course, to those at the office of the Public Complaints Commissioner, that austere body that has already made your lives so difficult and which has now launched a campaign to further lower the morale of Metro's officers.

At a time when increasingly successful efforts are continuing to improve relations between the police and the public, the Public Complaints Commission has had the gall to advertise for business in Metro area newspapers: "If you have a complaint about the Metro Police, we'd like to hear about it", reads the head-line.

Don't get me wrong; The Com-

mission is a fact of life at present but its existence is already known to Metro's citizens—and the facts show it. Any citizen with a serious allegation is going to file a complaint anyway. Promoting business via an ad campaign will only serve to increase the already startling number of frivolous complaints—with the result that innocent police officers will face the trauma of being wrongly accused.

If any doubt exists about the increase in vexatious allegations, all one needs to do is look at the Annual Reports pumped out by the Complaints Commissioner from 1982 to 1985 (The '86 Report won't be published until this Fall).

As Table 1 shows, since 1982 there has been a marked decrease in the willingness of citizens to resolve their complaints informally (36.8% in 1982 compared with 10.1% in 1985) and there has been a corresponding increase in the number of formal resolutions (76.8% in 1985 up from 55.2% in 1982). The number of complaints withdrawn has remained relatively constant.

The most telling figures, though are those in Table 2. If you look at the total number of cases withdrawn (presumably because they lacked substance) together with the number of cases where citizens pushed for a formal resolution but it was found that no action at all was warranted, it can be seen that the number of groundless cases is on the rise. I would have thought that the 60.6% in 1982 was

already too high and would have alerted the powers-that-be that there was something wrong. But to have 84.8% of the complaints filed in 1985 turn out to be groundless is appalling.

The problem is that filing a complaint against the police is all too easy because it's all too cheap—the citizen has nothing to lose if the taxpayers pick up the tab. If a citizen's rights are infringed his/her remedy should lie in the criminal or civil courts or in both. In civil court, litigants must put their money where their mouths are since, if they lose, they have costs awarded against them. This practice was instituted centuries ago so that the courts wouldn't get bogged down with frivolous law suits. It seems to me that the wisdom of our forefathers could teach the Government a thing or two when it comes to citizens complaints.

TABLE 1
RESOLUTION OF PUBLIC COMPLAINTS

	Cases Dealt With		Resolved				Withdrawn & Other	
	#	%	Informally #	%	Formally #	%	#	%
1982	609	100.0	224	36.8	336	55.2	49	8.0
1983	757	100.0	214	28.3	441	58.3	102	13.5
1984	643	100.0	143	22.2	420	65.3	80	12.4
1985	724	100.0	73	10.1	556	76.8	95	13.1

TABLE 2

Cases Dealt With	W/D	No Action	Total
1982	609	49	320
1983	757	102	407
1984	643	80	384
1985	724	95	519

PRESIDENT'S MESSAGE By Paul Walter

THE PUBLIC COMPLAINTS PROCEDURE

In late 1986, following the appalling decision by a Board of Inquiry under the Complaints Act that Terry Weller—one of the Force's more competent officers—should lose his job, it finally dawned on the local and Provincial powers that all was not well with the Citizens' Complaints system.

One of the many objections voiced throughout by your Association was that criminal allegations should and must be heard in criminal court. Although we were successful in ensuring that proof of misconduct under the Complaints Act should be "beyond a reasonable doubt" and not, as in civil cases, proof "on the balance of probabilities", the fact remained, as we were well aware, that evidentiary rules applicable to statutory tribunals such as Boards of Inquiry are far more relaxed than those in criminal court. For example, hearsay evidence which is rejected with good reason by the courts as unreliable appears to have been admitted by some Boards.

The stark reality of the Weller case is that Terry would **never** have been convicted had he been charged criminally. That he



PAUL WALTER
President

was convicted by a Board of Inquiry finally impressed upon everyone the need for change. The Association fervently believes that the only good external complaints system is a dead complaints system. However, until we achieve our goal of dismantling one of the most regressive pieces of legislation in recent memory, it is encouraging to report that situations like that involving Terry Weller will never again be heard by a Board of Inquiry.

The reason for this is that the policy concerning how to proceed changed earlier this year. Essentially, whether the matter goes before a Board of Inquiry or a criminal court, the Crown plays a pivotal role. Under the Complaints Act, the Crown now has carriage of the proceedings whereas, under the Criminal Code, the Crown prosecutes. Where a complaint has been laid against a police officer and the investigation is complete, there are two options: the matter can

either proceed before the Board of Inquiry or the Crown can elect to have the case heard by a criminal court. This decision will not be predicated on the quality of evidence but rather on the nature of the complaint. Under the new policy, any situation involving an allegation of serious criminal misconduct will be dealt with in criminal court. Trivial allegations and complaints not involving criminal misconduct may go to Boards of Inquiry.

Returning to Terry Weller, the Ontario Court of Appeal, as many of you will know, will hear the leave to appeal application of the Divisional Court ruling which upheld the Board of Inquiry's decision that he be dismissed. The application will likely be heard later this year. Terry, therefore, is still on the Force and I and the Association are doing everything within our power to preserve his job.

In the meantime, the fight to overturn the Complaints Act continues on all fronts. While the system still exists however, we all owe Terry Weller a debt of gratitude. But for his case, complaints involving allegations of a serious criminal nature would have continued to be heard by Boards of Inquiry.

Now at least, officers are ensured of a fair trial and due process before the criminal courts.

ARBITRATION UPDATE

The delays in finalizing the Uniform and Civilian arbitration hearings are unbelievably frustrating. The main reason behind them is the simple problem of scheduling. Trying to find dates when everyone is available has been a nightmare for the Arbitrators' secretaries. The unfortunate reality however, is that quality Arbitrators are in constant demand. As a general rule of thumb in the labour field, if an arbitrator can give you hearing dates next week then that means no one wants to use his/her services because of lack of confidence in his/her abilities. Neither of our Arbitrators, Mr. Ken Swan (Civilian), and Mr. Kevin Burkett (Uniform), fall into that category. Most recently however, Mr. Burkett did manage to free up the week commencing October 26, 1987 for us to finalize the Uniform arbitration. Regrettably, the Board of Commissioners' nominee to the arbitration panel had other commitments and we could not use those dates. We are still trying to get the hearing back on as soon as possible. One of the problems that has caused me great concern is the question of retroactivity. Although we don't anticipate it happening, what would occur if retroactive wages

were paid on or after January 1, 1988? Would those monies form part of 1988 income for tax purposes? Thankfully, our tax counsel advises that any retroactivity owing as a result of a 1987 arbitration award would be attributable to 1987 income.

Meanwhile, the Association is exploring ways and means to ensure that the delays that have occurred this year are not repeated in 1988. A variety of possibilities present themselves, all of which are being analysed. We know you, the members, want a quick settlement; the problem is to ensure that this can happen without damage to your long term interests.

While you are all suffering as a result of the delay, you might take satisfaction in the fact that those contract parasites, the negotiators for the City of York firefighters, are suffering even worse. You will recall that York Fire had the nerve to settle for whatever the uniform police won through negotiation or arbitration plus \$100. This kind of coat-tailing is beyond our control at this time but I'm pleased to tell you they haven't seen even a penny increase since September, 1986 because in their rush to let us negotiate for them, they forgot to provide for the possibility of an interim wage increase.

Finally, it bears stressing that your Association is really doing the negotiating for virtually all firefighter groups in Metro this year since all of them are waiting for our award to come down before settling. In fact, the only group that appears to have made an honest (albeit unsuccessful) effort to negotiate an agreement for 1987 is the City of Toronto Firefighters' Association. Once all of our negotiation and arbitration expenses have been tallied, it is my intention to divide the bill up and demand payment from the firefighters. If they want us to do their job for them, it seems only fair that they should subsidize our efforts.

Footnote: The October President's Message included a table describing the penalty percentages for early retirement. Printing gremlins were at work and did not reflect the correct dates. The following is what should have appeared:

		Percentage of Normal Pension Payable on Early Retirement			
		Before 1980	1980-1981	1982-1984	1984-Present
		1980	1981	1984	
25 years	80%	75%	80%	90%	
26	84%	78%	84%	92%	
27	88%	82%	88%	94%	
28	92%	87%	92%	96%	
29	96%	93%	96%	98%	

Dec. 1987 p.15

UNIFORM MEMBER SERVICES by Art Lymer

PENSIONS

The recent stock market crash that is being felt worldwide will have many of you wondering how our pension funds are holding up against the sudden decline in the value of stocks. magnitude of the moves in the markets past month has been nothing short of edible. As a Trustee on the Benefit d, I am happy to report that our iments are doing much better than most sion funds. During the past 12 months, Trustees have been looking for the opunity to put more of our money into the k market with the intention of having or, perhaps, 60% of our assets in ties. A study of pension funds in ments covering the past 50 years clearly rates that much higher rates of return been produced where 50% or 60% of money has been invested in the stock et and the other 50% or 40% invested nds and mortgages.

Withstanding our desire to invest more ey in the stock market, we felt that the et was due for a correction and held at the time of the crash we only had of our assets with investment coms dealing in the stock market. The agers in those companies were also apensive and were holding about a third portfolio in cash, the end result be- were only 20% invested in stocks the market took its chaotic dive. At the of putting this article to bed on mber 6th, the total return on our in- ents from January 1st of this year is



ART LYMER
Uniform Member Services

about 5%. If the stock market continues un- changed from now to year end, we will have sufficient monies available to give our pensioners a pension increase. If inflation is held at 4 or 5%, then we should be able to match the inflation. We are waiting for signs that the market has stabilized for the opportunity to invest more cash into the stock market.

ONTARIO SALES TAX ON MOTOR VEHICLES

What may be little known amongst our membership is a provision within the Provincial Ministry of Revenue Retail Sales Tax Branch that allows for the return of the 7% sales tax paid on the purchase of a motor vehicle. If you have a relative (i.e. spouse, parent, foster parent, father-in-law, mother-in-law, son, daughter, foster child, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, grandparent or grandchild) who is permanently deprived of the functional use of any limb or is permanently restricted to the use of a wheelchair, crutches, braces or similar mobility aids, or whose visual acuity in both eyes with refractive lenses is 20/200 or less, or whose field of vision is permanently less than 20 degrees, and you are required to drive this person about from time to time, you are entitled to a refund of the 7% sales tax paid

on your motor vehicle.

Your claim must be made within 3 years of the purchase of the motor vehicle. If you purchased your vehicle prior to October 1st, 1987 and your relative had asthma, angina, emphysema or similar diseases, you may also be entitled to a refund. The rules were changed on October 1st, 1987 to disallow the claim for asthma and related diseases.

The application form is available from your local Retail Sales Tax Offices, or by writing to: Ministry of Revenue, Taxation Data Centre, P.O. Box 630, 33 King Street West, Oshawa, Ontario, L1H 8L2.

PITFALLS OF THE CIVILIAN REVIEW BOARD

Thank you to all those members of our Association and the public who phoned, wrote, or sent in signed petitions supporting me on my article published in the Toronto Star on October 17th. There is no doubt that my criticism of the Civilian Review Board has the backing of the vast majority of our membership. I am confident that should it become necessary, our membership will be united en masse, ready to do whatever must be done to protect our members and their families from the obvious inequities of this legislation.

It is interesting to note that a recently released Gallup Poll lists medical doctors, police and engineers the most highly rated people in terms of honesty and ethical standards. Members of Parliament, advertising executives and labour union leaders were rated the lowest.

Doctors rated high or very high with 64%

(Continued on page 16)

IMPORTANT CORRECTION

OPTIONAL DEPENDENTS' GROUP LIFE INSURANCE

****To all members who currently have Dependents' Group Life Insurance for their spouse and children. (Please check ur Canada Life insurance wallet card under the "Dependents" column).**

In the October issue of News & Views at Page 30 titled "IMPORTANT NOTICE" the article was to advise members the Association of our intent to increase the value of the Dependents' Group Life Insurance from the current \$10,000.00 spouse and \$2,000.00 for each child to a new coverage value of \$20,000.00 for spouse and \$5,000.00 for each ld. The notice advises **INCORRECTLY** that such increased coverage would "**AUTOMATICALLY**" take effect on January 1988.

HOWEVER, since this insurance is **OPTIONAL** to members of the Association, **THE INCREASE CANNOT BE IMPLEMENTED WITHOUT THE EXPRESSED CONSENT OF EACH MEMBER** as opposed to the October notice offering mbers the opportunity to object to the increase.

We firmly believe that this opportunity to upgrade the life insurance for members' families at minimal group rates be well received by our members. Members will still be able to apply for the increased coverage during the Annual mpaign, January—March 1988 and the effective date of such coverage will be May 1, 1988.

LOOK FOR THE GROUP LIFE INSURANCE APPLICATION IN YOUR JANUARY AND FEBRUARY ISSUES OF NEWS /IEWS.

PRESIDENT'S MESSAGE By Paul Walter

The Public Complaints Procedure

In this month's "Message" I merely want to print a response from Mr. Clare Lewis, the Public Complaints Commissioner, to my November article and my reply to his letter. Draw your own conclusions—they are likely to be the same as mine.

Dear Mr. Walter:

I have read with interest your "President's Message" entitled "The Public Complaints Procedure" in the November 1987 issue of *News & Views*. Your statement of a new policy regarding the nature of cases before Boards of Inquiry is grossly erroneous and seriously misleading to your members. Your article presents a major distortion of the position which I presented to you one and one half years ago. I wish to inform you unequivocally that I shall not be bound, nor indeed, influenced by your misrepresentation.

I had advised you that in some cases in which I might call a Board of Inquiry, Crown counsel might decide that criminal proceedings should result. The Crown would consider a great many factors in making such a decision, including whether or not the case was recent enough to withstand a *Charter* challenge in the criminal court on the basis of delay.

I further informed you that in the event that a Crown should cause criminal charges to be laid, the result of the criminal proceedings might, depending on the circumstances, be relevant to the proceedings before the Board of Inquiry.

The law is clear that vocational disciplinary proceedings and criminal proceedings may be maintained in regard to the same facts. I remind you of the recent decision of the Supreme Court of Canada in *Wigglesworth*. I have never indicated to you that disciplinary proceedings would be automatically terminated if the Crown, rather than the Chief of Police, were to cause criminal charges to be laid in the circumstances described.

I told you my understanding of the position of Crown counsel during the summer of 1986. Since that time I have called Boards of Inquiry in matters which have involved allegations which, had they been proved before a criminal court, would have constituted serious criminal conduct. The Crown has not chosen to lay criminal charges in those cases. The Boards have proceeded with their vocational disciplinary hearings in the normal course as they are obliged by law to do.

Given your long-standing knowledge of these matters, your presentation is, at a minimum, a serious disservice to your members.

It is apparent to me that your article is but one more of your many strategies to meet your goal, as stated in the article, that "the only good external complaints system is a dead complaints system."



PAUL WALTER
President

I have been previously denied the opportunity to correct misstatements in *News & Views*. If you have changed your policy in that regard please let me know.

CLARE E. LEWIS
Public Complaints Commissioner.

Dear Mr. Lewis:

Thank you for your letter of November 23, 1987 in response to my November "President's Message". I was surprised that you would accuse me of making statements which are "grossly erroneous and seriously misleading to [my] members." I understand you have made similar remarks at C.O. Bick College which were equally, if not more, disparaging and most unbecoming for a person in your capacity.

Let me explain why I was surprised. The policy to which I was referring is not "a major distortion" of the position you presented at a meeting one and one half years ago for the simple reason that nothing I said was in relation to that meeting at all. Your letter therefore appears to have resulted from a misunderstanding on your part.

As you are well aware, it is only in the most exceptional of cases that it falls to the Public Complaints Commissioner to decide whether or not a board of inquiry should be instituted under the *Metropolitan Toronto Police Force Complaints Act, 1984*. In the normal case, after a complaint has been filed and it has been investigated by the Force's Public Complaints Investigation Bureau, the Chief of Police is charged with the statutory duty of deciding what the next step in the proceedings should be. In that regard, he can decide i) that criminal charges should be laid or ii) that a board of inquiry should be instituted under the *Complaint Act* or iii) that disciplinary proceedings under the *Police Act* should be pursued or iv) that the officer should be cautioned or counselled.

If the Chief decides that criminal charges should be laid, the legislation is quite clear that he can, in addition, opt only for one of the other three alternatives. As I understand it, it is the policy of the Chief of Police (and this is the policy to which I was referring in my President's Message) that where criminal charges have been laid he will not order that the complaint be heard by a board of inquiry. In the normal case, therefore, the substance of my President's Message was entirely accurate.

This is not to say, however, that in the exceptional case the legislation might permit you the discretion to order a board of inquiry

in a situation where criminal charges have also been laid. About the only way that this could arise, so far as I understand it, would be if, initially, the Chief of Police decided that criminal charges should be laid and he also ordered a *Police Act* hearing. It is the Force's internal policy to stay *Police Act* hearings pending the outcome of the criminal case. Assuming, however, that a member of our Association was acquitted criminally and the *Police Act* charges were withdrawn, as they always have been, it is conceivable that the complainant under the *Complaints Act* could request that you review the matter if he was dissatisfied with the outcome of the *Police Act* trial. Technically that would then place you in the unlikely but interesting position of having to decide whether or not it would be in the public interest to set up a board of inquiry after the subject officer had already been acquitted in another public forum, namely, the criminal courts. It was quite apparent though, during our recent meeting, that when you wrote your November 23, 1987 letter you had not properly acquainted yourself with the "Bill of Rights for Police Officers. Item (n), in particular, states:

(n) No officer shall be permitted to suffer double jeopardy in accordance with the rule of law. Specifically, no officer shall be required to face a disciplinary charge where the conduct complained of is identical to that which formed the subject matter of a prosecution in the courts that resulted in an acquittal.

This and the other provisions in the Police Officers' Bill of Rights were supported by your predecessor and the former Conservative Government even though it did not parallel the Complaint Act verbatim. Just because "the players" may have changed, the previous "deal" must be respected.

I must also take issue with your characterization of proceedings before a board of inquiry as "vocational disciplinary proceedings". The only authority for this view is the Divisional Court's ruling in the *Weller* case, which leave to appeal is being sought in the near future. It may well be that when a higher court has ruled on the matter, your opinion will have to change.

Finally, I am disturbed by the assertion that you "have been previously denied the opportunity to correct misstatements in *News & Views*." This is not correct. While it is true that a letter from you to the Editor of *News & Views* was not published because of an editorial policy against inserting letters from non-members, you have omitted to point out that in a response letter, copy attached, the Editor specifically offered you the opportunity to write an article(s) for the magazine outlining your position and concerns. I am informed that you never took advantage of the Editor's invitation.

Paul Walter

EDITORIAL By Doug Ramsey

PUBLIC COMPLAINTS
LEGISLATION—
THE ISSUE

In 1974 the Ontario government commissioned Mr. Arthur Maloney to form a one-man task force to review and recommend a system of independent review of public complaints against the police. Mr. Maloney's report was followed closely by the now famous Royal Commission (better known as the Morand Commission) to review allegations of police brutality by the members of the Metropolitan Toronto Police Force. The outcome was released in 1976 and its contents supported the Maloney Report tendered to government the previous year.

Again in 1977, numerous complaints against the police were received and yet another high profile individual was commissioned to investigate these complaints. Ryerson's then President, Mr. Walter Pitman, headed the commission that, in the end, called for an independent complaints procedure. For those of you who were around in 1978-79, you will remember that we suffered through a bad time due to the number of members of the public who were killed by the police. There were many demonstrations which resulted in yet another review, this time by his eminence Cardinal Carter and again his report supported an improved procedure for handling complaints against the police.

During this period 1974 through to 1981, the Association executive, namely Syd Brown, Mal Connolly, Al Evelyn, Paul Walter, Bob Morrison and Art Lymer, fought against any such legislation. I think it should be noted here that they were successful for 7 years in preventing any such legislation from coming into effect. In mid 1981, the Tory government introduced legislation known as the Metro Toronto Police Force Complaints Project Act. This time both your Association representatives and those of the Police Association of Ontario voiced their objections and made representations to ensure that it would be a fair system once it became apparent that the legislation was going to be passed.

And passed it was with the support of all three political parties. Also, it should be noted that the Police Force itself was going through significant changes in how it operated during this period. In response to the criticism that it had been receiving, the Force changed a number of policies affecting the operation of the Force and requirements for candidates to the Force. Ethnic relations squads were formed and race relations courses were started. All these changes were meant to offset the

negative publicity that the Force had been receiving, thus eliminating a number of the problems that had sparked the demand for a citizens review agency of police actions that had come forward in the previous years. Nonetheless, the legislation was passed again in 1984 changing the project act into a permanent one now known as the "Metro Toronto Police Force Complaints Act, 1984".

During the three year project period continued representations were made to government to have the act changed to provide a more fair and equitable system, but these requests fell on deaf ears. I guess no one likes having their baby called ugly. Anyway, the P.C.C. has continued on its merry way under the smiling eyes of its benevolent parent, the provincial government, who dole out in excess of one million dollars a year of the taxpayers money to support its little darling and it appears that for this current year, the costs are expected to rise to between 1.5 and 1.9 million dollars. Not only that the government has Bill 18 on the table to expand this legislation in its current form thus increasing costs further. That in my mind is a pretty expensive child who is definitely in need of some discipline by its parent before it grows too big to control.

No one likes to be the one to tell the parent of a bad child that their little darling is not the wonderful individual that they think but rather a little brat whose behaviour has to be changed in order to function properly in today's society.

But this seems to be the lot of a policeman rarely are we the bearer of good tidings. Unfortunately, we are usually cast in the role of being the one responsible for bringing bad news, i.e. a death or injury, etc.

In this case I think our role is well suited for who else has had the courage to stand up and say to the government "Your kid has got a problem".

Your Association (this means you) has recently spoken out loud and long on the issues and change is now going to happen. The Chief and the Deputies have now publicly joined our cause and will not only support our position but actively campaign with us for the needed changes to the legislation.

The press has had a field day with our fight battling our position back and forth across the public fence. One day we're in the right and the next, in the wrong. If any of you didn't believe in the power of the press before, I sure hope you do now.

To those members of the press community who will have an opportunity to read our magazine, I would like to quote to you an excerpt from the RCMP Public Complaints Commission Report written by Chairman Judge Marin. I think his comments best reflect the thoughts of the membership and the executive of the Association. It reads as

follows: "Each day, members of the Force deal with persons who are accused of criminal activities: the Courts impress upon these members the need to respect their human dignity, their rights under common law and the Charter of Rights and Freedoms; indeed the Courts will not turn a blind eye to those members who breach or violate an accused's rights, without regard to the crime of which that person may stand accused. It is therefore natural for a member who has committed an indiscretion or perceives an injustice in the Force which affects him or her to want to be treated with the same dignity, and understanding, and to have the same protection that the Courts enforce with respect to those who are alleged to have breached the law."

Please remember we are not anarchist nor are we an unruly mob trying to get our own way. We are part of the Justice System in this great city and as such wish to receive fair justice when accused of wrong doing. In the same manner, as those we arrest for alleged wrong doing on a daily basis.

I think what seems to be forgotten in all of this is that we too are citizens and members of the public, albeit special ones but justice is for all. Isn't it?

Mr. Paul Godfrey,
Editor-in-Chief, Toronto Sun Newspaper.

Sir;

Re: POLICE-COMPLAINT PROCEDURE

Anyone that thinks that because "only" 3% of the civilian complaint boards' allegations are substantiated, that it is not important enough to warrant the present job action, shows a woeful lack of knowledge of the problems facing this city's Police Officers.

A travesty of justice is, after all, a travesty of justice, regardless of how small the percentages are. Frivolous complaints, i.e. the officer smiled too much, the officer was too polite, etc. etc. have already had an effect on many officers performance. To be over-seen is one thing, to be microscopically scrutinized for every word, action and imagined thought is grossly misdirected. Men and women that truly love their jobs and believe in what they are doing, are sick and tired of "bandwagon" politicians and media, who have, as is usual, bowed to the pressures of the vocal minority and condemned without investigation. Responsible people learn both sides of an argument before deciding.

The entire criminal justice procedure, the Criminal and Civil Courts, are all sufficient safeguards when a **bad apple** commits a criminal offence. If Constable Weller had assaulted that man hard enough to require

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PRESIDENT'S MESSAGE By Paul Walter

Justice For All

“What is termed “disrespect for law” in fact may only be the manifestation of a burning desire for justice. Order, like law, to be respected, must deserve respect. Disrespect for an order that does not deserve respect ought not to be condemned as degeneration, but commended as a healthy regeneration.**”**

J.C. McRuer, former
Chief Justice of Ontario, Sept. 5, 1966.

We continue to take the view that the Metro Police Complaints Commission is seriously flawed. There is no question that the public is entitled to a system whereby legitimate complaints against the police can be processed.

We believe that it is important, indeed vital, to the concept of natural justice that this process be consistent with the traditional framework of the Canadian criminal law system. Thus, the rule of law, the law of evidence, the presumption of innocence, the prospect of trial by judge, the test of reasonable and probable grounds and the right of appeal would be the cornerstones on which a review process for citizen complaints should be based.

It is common knowledge that most of the complaints made against our police force are not sustained. Often they are dropped for insufficient evidence or are baseless. Sometimes they are vehicles for plea bargaining. And where there have been rare convictions, the police officer has paid the price.

We anticipate meeting with the Attorney-General and his representatives in the near future to advance thoughtful and responsible suggestions to improve the public complaints process and to ensure that the rights of our members are no less than those of any other Canadian citizen under the Charter of Rights and Freedoms.

Our request is not unreasonable. It is not unfair nor unrealistic. We simply seek to enjoy the same privileges as any other citizen under the criminal law process.



**Metropolitan
Toronto
Police
Association**



DEVICE PUTS DISABLED IN ELECTRIC WHEELCHAIRS by Donald Grant

The Hugh MacMillan Medical Centre in Toronto has developed a microcomputer-based control box that researchers say will allow hundreds of handicapped children to operate electrically powered wheelchairs.

The device, developed by Ed Snell, coordinator of the centre's interface programs, along with Bert Shire and Jerzy Antczak, will let children operate power wheelchairs even if they cannot use a normal joystick.

The device scans a series of switches that control the chair's motion, such as going left or right and backward or forward. A child activates the switches with a specific action, such as moving the head.

"Until now, children without stable physical movements have been pushed from place to place," Mr. Snell said.

He said his wheelchair program is "unique in North America" and is financed by Metro Toronto's 7,000 police officers.

"Without the funding from the police (the Metro Toronto Police Association), there just wouldn't be any research and development

in this field. If children in the United States can't operate the commercially developed powered wheelchair (with a joystick), then they can't drive at all."

Mr. Snell knows all about wheelchairs: he has been using one for years because he had polio during an epidemic in the early 1950s in Manitoba when he was a year old.

While most handicapped children can use a joystick, "we see all the tough ones here—the ones that can't drive a commercial wheelchair. Annually, we do about 115 assessments on children and then 40 per cent are not candidates. They may be too young or simply haven't the manual dexterity required to drive a wheelchair. Others may never be."

At present, Andrew Spencer, 8, of Markham is learning to drive the wheelchair with the microcomputer controls. Andrew has cerebral palsy.

That money comes from the \$40,000 the police association donates annually to the centre—proceeds from the association's annual concert at Maple Leaf Gardens.

The police concerts were started more



Constable Anthony Foreman with Andrew Spencer

than 65 years ago to help officers who were off duty without pay. But when the police got a contract providing better sick benefits, the association switched the proceeds to the centre's research projects.

Courtesy of The Globe and Mail

(Continued from page 12)

Bach Remedies function differently than standard pharmacological drugs, in their effect and scope of action, and have been shown to be a safe and effective way of reducing stress (Vlamiš 1986). This approach is part of a new direction in medicine. A move away from the unnecessary use of strong pharmaceutical agents, which often cause side-effects and create dependency, toward more natural, gentle acting substances which can assist the body in mobilizing its own internal healing capabilities.

Most widely used of these Bach Remedies is a combination formula composed of five of the flowers called Rescue Remedy. In his book *Flowers to the Rescue*. London, New York: Thorsons Pub. Co. 1986, medical researcher Gregory Vlamiš reports on Rescue Remedy's positive calming and stabilizing effect in a wide range of stressful and emergency situations. Here, Rescue Remedy is reported effective used for emotional stress arising from accidents, bereavement, hysteria and times of fright. Even minor everyday anxieties, such as taking exams, giving speeches, going on job interviews, as well as the stress resulting from arguments and other hostile encounters, is said to be alleviated with Rescue Remedy.

In the book, Mary Catherine Kelly, a New York City financial advisor, describes her introduction to the Bach Remedies through her use of Rescue Remedy. "Following severe personal problems I found myself experiencing acute anxiety attacks nearly everyday. This no doubt was aggravated by my quitting smoking. To control the anxiety, I started taking Valium and other tran-

quilizers on and off for a year. Also, for the two previous years I'd had dizzy spells that no doctor could find the cause of. The day I took Rescue Remedy was the last day I needed a tranquilizer. As I continued the use of the Rescue Remedy, my anxiety attacks slowly abated, then disappeared, as completely as did my dizzy spells."

We are rapidly approaching a health crisis in this country. Stress and related disorders have grown to become a major concern to us all. Parallel to this the indiscriminate use and abuse of chemical drugs has become so rampant that on July 1, 1987, New York State will have passed one of the toughest regulations nationwide restricting the use of Valium and Xanax, both currently taken for anxiety and depression.

Perhaps in searching for safe, nonhabit forming alternatives to chemical drugs, natural substances like Bach Remedies may be just what the doctor ordered.

Bach Remedies can be found in pharmacies and health food stores throughout the metropolitan area. However, if there is difficulty in locating them or for further information, one can contact Bach Canada, 3 Cassels Ave., Toronto, M4E 1X9, Tel. 690-8600.

NOTE: Persistent conditions, and those conditions requiring medical attention should be referred to a physician immediately. Leslie J. Kaslof is a Director, City of New York, Police Reserve Association. He is an internationally recognized authority, noted health researcher, writer, educator, and published author in the field of holistic and preventive medicine; he is the developer and series editor for Health Shield, a health column series for law enforcement publications.

(Continued from editorial page)

surgery to a testicle, a serious criminal act, think of the egotists that have set themselves up as judge and jury over and above the Criminal Courts. If a physician errs, his medical review board investigates. If on the other hand, he commits a criminal offence, he soon finds himself before the Courts. Any other system is repulsive. For complaints of a less serious, non-criminal nature, the complaint board is an adequate format, in theory. In practice, however, we are seemingly judged before the hearing and forced into proving our innocence, rather contrary to what any citizen demands of the system. Certainly when it is getting so bad that lawyers are telling clients to "lay a complaint... it's a useful plea bargaining tool!", then the situation has deteriorated to a point worthy of re-evaluation. That, even the most optimistic of us will agree, is the best we can hope for in this situation. To even hint that the fine officers of this city demand no checks and balances in the system, in order to run rampant over the poor, unsuspecting citizens, is both insulting and ill-informed.

When the Police require a watchdog, let's get one with some judicial experience that presides over a hearing. Someone interested in seeing justice and not padding a lucrative political career. A judge that presides and follows the Rules of Evidence. Rules that protect the common people don't seem to be applied to your Police Force.

If you ask yourselves, after reading this, "well if it's really this bad, why did they wait so long to complain?", I can only offer this small insight. Policemen are human and as such are basically procrastinators. The "it will never happen here" syndrome changed when the bubble burst and we realized that it can and it is happening here. We hope that the truly concerned citizens will understand that the problem is not, nor ever has been with them; the problem is with the system. Even the command, and I suspect, even the Commission of this Force recognizes that. The system, even the most naive of us must surely agree, must now be changed.

Yours sincerely, R. Murdock, Constable



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